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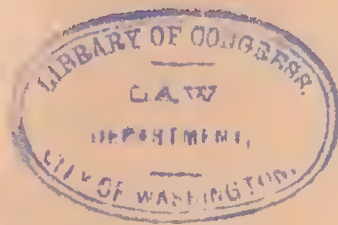
HIGHWAY LAWS  
OF THE  
STATE OF IOWA;

CONTAINING  
ALL THE LAWS OF IOWA

RELATING TO THE  
Powers and Duties of Highway Supervisors,

WITH ALL

AMENDMENTS, INCLUDING THE LAWS OF 1896, WITH  
PRACTICAL FORMS AND PROCEEDINGS.



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BURLINGTON, IOWA:  
ACRES, BLACKMAR & CO., PUBLISHERS.  
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## PUBLISHERS' NOTICE.

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Our last edition of the Highway Laws of Iowa having been exhausted, we have carefully revised them, adding the amendments and new laws of 1896, and such late decisions of the Supreme Court as seem applicable, and herewith present a new edition.

The work contains all the laws on the subject of highways now in force, including those embraced in the Code of 1873 and the twelve volumes of Session Laws published since 1873, together with the decisions of the Supreme Court applying to the subjects treated, with practical forms and proceedings.

ACRES, BLACKMAR & CO.

August, 1896.

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# HIGHWAYS.

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## 1. ESTABLISHMENT OF HIGHWAYS.

Sub-division 5, of section 45, of the code, is as follows:

5. The words "highway" and "road" include public bridges, and may be held equivalent to the words "county way," "county road," "common road," and "state road."

SECTION 920. The board of supervisors has the general supervision over the highways in the county, with power to establish and change them as herein provided, and to see that the laws in relation to them are carried into effect.

Bridges are part of the public highway, and are therefore under the general supervision of the board of supervisors; and courts will not compel them by *mandamus* to build a bridge (43 Iowa, 192).

The board of supervisors has no authority to establish highways in the limits of incorporated towns or cities (72 Iowa, 173).

SEC. 921. Highways hereafter established must be sixty-six feet in width, unless otherwise directed; but the board of supervisors may, for good reasons, fix a different width, not less than forty feet, and they may be increased or diminished within the limits aforesaid, altered in direction, or discontinued, by pursuing substantially the steps herein prescribed for opening a new highway.

The auditor has no power to establish a highway less than sixty-six feet wide, and if he attempts to do so, the board of supervisors may set aside his action (45 Iowa, 482).

But if the records of the board show an approval of the act of the auditor establishing a road less than sixty-six feet wide, such highway is proper and legal (61 Iowa, 572).

The establishment of a highway wider than authorized does not render the order establishing it void. It is an irregularity which cannot be taken advantage of in a collateral proceeding (20 Iowa, 248).

An attempt to build a bridge by the side of a highway to save money may be enjoined if it works any injury to an adjoining property owner (61 Iowa, 471).

SECTION 922. Any person desiring the establishment, vacation, or alteration of a highway, shall file in the auditor's office of the proper county a petition, in substance as follows:

No. 1.—PETITION TO ESTABLISH, ALTER OR VACATE A HIGHWAY.

To the Honorable Board of Supervisors of.....County:

The undersigned ask that a highway, commencing at [here accurately describe

the place of beginning,] and running thence [here describe the course] and terminating at [here accurately describe the terminus,] be established, vacated or altered (as the case may be).

Dated.....18.....

PETITIONERS' NAMES.

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PETITIONERS' NAMES.

The petition should not state the width (45 Iowa, 482), and a petition asking for the appointment of a commissioner instead of for the establishment of a road, is not a material defect (38 Iowa, 252). Section 1, chapter 32, session laws of 1880, giving right to build street railways on the highway, must be construed as authorizing highways wider than sixty-six feet (55 Iowa, 505).

The petition may not follow the precise language of the statute (24 Iowa, 362). But a highway cannot be established lawfully unless the board has been petitioned, and a petition asking for the opening and re-establishment of a road will not authorize proceedings to establish one (72 Iowa, 151).

The petition to establish or vacate a highway must follow the statutory form (90 Iowa, 346); and the establishment and vacation of a highway may be asked in the same petition (88 Iowa, 219).

SECTION 923. Before filing such petition, the auditor shall require the petitioner to file in his office a bond, with sureties to be approved by such auditor, conditioned that all expenses growing out of the application will be paid by the obligors in case the contemplated highway is not finally established, altered or vacated, as asked in the petition.

A failure to file the bond referred to will not invalidate the proceedings (32 Iowa, 130).

If the auditor proceeds without a bond, his action is not, because of that fact, without jurisdiction, the directions in respect thereof being simply directory (61 Iowa, 572).

SECTION 924. If satisfied that the foregoing prerequisites have been complied with, the auditor shall appoint some suitable and disinterested elector of the county a commissioner to examine into the expediency of the proposed highway, alteration or vacation thereof, and report accordingly.

## II. DUTY OF COMMISSIONER TO ESTABLISH HIGHWAYS.

SECTION 925. The commissioner is not confined to the precise matter of the petition, but may inquire and determine whether that or any highway in the vicinity, answering the same purpose and in substance the same, be required; but such highway must not be established through any burying ground which is exempt from execution; nor through any garden, orchard, or ornamental ground contiguous to any dwelling house, nor so as to cause the removal of any building without the consent of the owner.

A small plum tree, a cottonwood tree, a small grapevine, a wild currant bush and a few roses do not constitute a garden or ornamental grounds (64 N. W. Rep. 622).



The commissioner has no authority to lay out a road beyond the point fixed in the petition (18 Iowa, 525).

SECTION 926. In forming his judgment he must take into consideration both the public and private convenience, and also the expense of the proposed highway.

The establishment of a highway is for the public convenience; private convenience alone is not sufficient (47 N. W. R., 1044).

A highway cannot be established for the convenience of one person (82 Iowa, 358).

SECTION 927. After a general examination, if he shall not be in favor of establishing the proposed highway, he will so report, and no further proceedings shall be had thereon.

An adverse report ends all proceedings under the petition. A report by another commissioner appointed by the auditor has no validity (52 Iowa, 709).

After a commissioner has made his report, a second commissioner cannot be appointed to view and make a report (86 Iowa, 385).

If the commissioner report adversely, the application cannot be considered as longer pending (59 Iowa, 481), and his report must show a determination, or it will not be sufficient to show the establishment of a highway (52 Iowa, 660).

SECTION 928. If he deems such establishment expedient, he may proceed at once to lay out the highway as hereinafter directed, and may report accordingly, if the circumstances of the case are such as to enable him to do so, without pursuing the course pointed out in the next section.

SEC. 929. If the precise location of the highway cannot be otherwise given, he must cause the line of the highway to be accurately surveyed and plainly marked out.

SEC. 930. Any commissioner other than the county surveyor must be sworn to faithfully and impartially discharge his duty as such commissioner, and, after being thus qualified, he shall have power to swear the assistants employed to a faithful and impartial performance of their respective duties in laying out the highway described in his commission.

The commissioner should be sworn, but an affidavit before one not authorized to administer oaths will not render his work invalid (32 Iowa, 130).

SECTION 931. Mile posts must be set up at the end of every mile, and the distance marked thereon, and stakes must be set at each change of direction, on which shall be marked the bearing of the new course. Stakes must also be set at the crossing of fences and streams, and at intervals in the prairie not exceeding a quarter of a mile each; in the timber the course must be indicated by trees suitably blazed.

The provision of this section are directory only, and a failure to follow it minutely will not render the proceedings void or illegal (24 Iowa, 362).

SECTION 932. Bearing trees must, when convenient, be established at each angle and mile post, and the position of the highways relative to the corners of sections, the junction of streams, or any other natural or artificial monument or conspicuous object, must, as far as convenient, be stated in the field notes and shown on the plat.

SEC. 933. A correct plat of the highway, together with a copy of the field notes of the survey, if one has been employed, must be filed as part of the commissioner's report.

SEC. 934. Within thirty days from the day of his appointment, the commissioner must file his report in the auditor's office, and if it be in favor of the establishment of the highway, shall report the number of bridges required, if any, and the probable cost thereof on the proposed highway. The auditor must appoint a day, not less than sixty nor more than ninety days distant, when the matter will be acted upon; on or before which day all objections to the establishment of the highway and claims for damages by reason of the establishment thereof must be filed with the auditor.

Final action on a date subsequent to the one fixed will be presumed to be in pursuance of a proper resolution (32 Iowa, 130). All claims for damage must be filed as provided (7 Iowa, 248; see note to section 946).

A date fixed for final hearing less than sixty days is an irregularity, but will not render its action open to collateral attack (39 Iowa, 226).

SECTION 935. The time for the commissioner to commence the examination shall be fixed by the auditor, and if he fails to so commence, or to report as prescribed in the preceding section, the auditor may fix another day, or extend the time for making such report, or may appoint another commissioner.

Changes in the location of a highway from that described in the petition, made during and in the course of proceedings to lay it out, will be presumed correct in a collateral proceeding (15 Iowa, 213); but where the commissioner extended the highway beyond the terminus named in the petition, it was void (18 Iowa, 225). The fixing visible monuments, and the making of field notes and a plat of the road, as provided in sections 931 and 932 of this chapter, are merely directory, and a failure on the part of the commissioner to comply therewith will not render the proceedings void (24 Iowa, 367).

### III. ASSESSMENT OF DAMAGES ON HIGHWAYS.

SECTION 936. Within twenty days after the day is fixed by the auditor, as above provided, a notice shall be served on each owner or occupier of land lying in the proposed highway, or abutting thereon, as shown by the transfer books in the auditor's office, who resides in the county, in the manner provided for the service of original notice in actions at law; and such notice shall be published for four weeks in some newspaper printed in the county, if any such there be, which notice may be in the following form:



## No. 2.—NOTICE TO PROPERTY OWNERS.

*To all whom it may concern:* The commissioner appointed to locate, vacate, or alter (as the case may be) a highway commencing at.....in.....county, running thence [here insert the names of the owners of the land through, on or along which the proposed highway passes, as they appear upon the transfer books in the auditor's office, and describe in general terms all the points, as in the commissioner's report], and terminating at....., has reported in favor of the establishment, vacation, or alteration thereof, and all objections thereto, or claims for damages, must be filed in the auditor's office on or before noon of the.....day of .....18....., or such highway will be established, vacated, or altered (as the case may be) with reference thereto. ....County Auditor.

The petition and notice required by the above section are necessary to confer jurisdiction upon the supervisors, and the record of their proceedings must show them (64 Iowa, 243; 39 Iowa, 274). Notice to conditional owners and others, not shown by the transfer books, not necessary (42 Iowa, 173). The notice should be served personally upon the owner, as shown by the transfer books, if the owner is a resident of the county, and if a non-resident, then upon the occupant, though his name is not upon the transfer books (49 Iowa, 569).

In order to make the proceedings valid, the notice must contain the names of non-resident persons who own lands abutting, according to Auditor's transfer books (91 Iowa, 275). A mistake in the notice and petition as to the place of beginning renders the proceedings invalid (45 Iowa, 257). A railroad running over land is such occupier as must be served with notice (80 Iowa, 586). A failure to serve vitiates the proceeding (60 N. W. Rep. 226).

Personal notice need be given only to residents of the state in actual occupancy of land. Notice upon foreign railway corporations through whose land the proposed road passes is sufficiently served by publication (68 Iowa, 135). Not so on corporations of this state (43 N. W. Rep., 277). If the auditor determine the sufficiency of the notice, it casts upon one questioning the fact the burden of disproving it (64 Iowa, 198). The notice required by the foregoing section does not apply to city streets or alleys (66 Iowa, 687).

The notice may be served by the sheriff, constable, or any other person not an interested party, and the service must be made by reading the notice to each person named therein, or offering to read it if he neglects or refuses to hear it read, and in either case by delivering him personally a copy of the notice; or, if he refuses to receive it, by offering to deliver it (code of 1873, sections 2601-2-3).

If service cannot be made on the parties personally, on account of their not being found in the county, then it must be made by leaving a copy of the notice at his usual place of residence with some member of the family over fourteen years of age.

Service may also be made by taking an acknowledgement of the service endorsed on the notice, dated and signed by the persons on whom service is to be made (Code of 1873, section 2603).

The notice must be returned to the auditor on or before the day set for hearing, with the proper return made thereon, which return must be sworn to, unless served by an officer; which return may be made in the following form:

No. 3.—RETURN TO NOTICE WHEN SERVED PERSONALLY.

I hereby certify that I served the within notice on the within named [here name each person served] by reading the same to each personally (or offering to read it), [here state the place and manner] and delivering (or offering to deliver) to each of them a true copy thereof, on the.....day of.....18....., in.....county, Iowa.  
Service, \$.....; copies, \$.....; mileage, \$.....

.....*Sheriff or Constable.*

When served by copy the return may be as follows:

No. 4.—RETURN TO NOTICE SERVED BY COPY.

I hereby certify that I served the within notice on the within named [here name the person served by copy] on the.....day of.....18....., by leaving a copy thereof at the dwelling house of [here state whose house]. in.....township..... county, Iowa, that being the usual place of residence of [here name the person or persons served], with [here give the name of the person with whom the copy is left], (he or she) being a member of the family over fourteen years of age. The said [here name the person or persons] not being found in.....county, Iowa.

Fees, \$.....

.....*Sheriff or Constable.*

When practicable, the persons named in the notice may acknowledge service in writing thereon, as follows:

No. 5.—ACCEPTANCE OF SERVICE OF NOTICE.

I (or we) do hereby acknowledge due and legal service of the within notice, this.....day of..... 18.....  
.....

When service is acknowledged according to form No. 5, neither copies to the parties, nor formal return by the officer or person serving the same is required.

The reading of the notice, and also the delivering of the copy, may be waived by the parties served, and the fact noted in the return.

When the notice is served by any person not an officer, or when served out of the state, the affidavit of the person serving the same may be as follows:

No. 6.—AFFIDAVIT TO RETURN OF NOTICE TO PROPERTY OWNERS.

STATE OF IOWA,.....County, ss.

I....., on oath, say that I served the within notice [here proceed as in the foregoing forms, as the case requires].

Subscribed and sworn to before me by.....this.....day of.....18.....

.....*Justice of the Peace.*

The return must be in strict compliance with the statute (1 Green, 346; 10 Iowa, 553; 12 Iowa, 204), and must show the time, manner and place of service, and that a copy was delivered, or offered to be delivered to the person served (code of 1873, section 2604; 27 Iowa, 465).

The notice should be published in the paper most likely to give notice to all parties interested; provided more than one such paper is published in the county.

A foreign railroad corporation, over whose track a highway is being established, may be notified by publication of the proposed establishment of the highway (68 Iowa, 135).

Proof of the publication must be made by the affidavit of the publisher or other competent person knowing the fact.

But formal proof of notice by publication, need not be made to authorize the auditor to act (64 Iowa, 198).

SECTION 937. If no objections or claims for damages are filed on or before noon of the day fixed for filing the same, and the auditor is satisfied the provisions of the preceding section have been complied with, he shall proceed to establish such highway as recommended by the commissioner, upon the payment of costs. If such costs are not paid within ten days, the auditor shall report his action in the premises to the board of supervisors at their next session, who may affirm the action of the auditor, or establish such highway at the expense of the county.

The auditor has no power to fix the width of a highway at less than sixty-six feet (45 Iowa, 482), and the action of the auditor is subject to review by the board (38 Iowa, 263); and an appeal cannot be taken from the action of the auditor, but only from that of the board (39 Iowa, 244).

SECTION 938. If the auditor is satisfied the notice has not been served and published as provided in section nine hundred and thirty-six of this chapter, he shall appoint another day, and cause such notice to be served or published, as provided in said section, and thereafter proceed as provided in the preceding section.

SEC. 939. If objections to the establishment of the highway or claims for damages are filed, the further hearing of the application shall stand continued to the next session of the board of supervisors held after the commissioners appointed to assess damages have reported.

The auditor cannot establish the highway, though the damages claimed have been paid, but the hearing must be continued to the next meeting of the board (52 Iowa, 568).

SECTION 940. When claims for damages are filed, and on the day appointed for filing the same, the auditor must appoint three suitable and disinterested electors of the county as appraisers to view the ground, on a day fixed by him, and



report upon the amount of damages sustained by the claimants; such report shall be made and filed in the auditor's office within thirty days after the day they are appointed.

Timber growing upon land appropriated for highway purposes remains the property of the former owner, and is not to be taken into account in determining his damages (9 Iowa, 594). If the appraisers are appointed by the auditor before the day appointed for filing claims, without notice to the claimants, the proceedings are illegal. Claimants have a right to be present when such appointments are made, and to be heard in relation thereto (55 N. W. Rep., 6).

SECTION 941. All claims for damages and objections to the establishment, vacation, or alteration of the highway must be in writing, and the statements in the application for damages shall be considered denied in all the subsequent proceedings.

Under this and section 946, damages for vacation of highway cannot be recovered by an adjacent owner of land, nor by any other person (40 Iowa, 571; *ibid*, 576).

SECTION 942. The auditor shall cause notice of their appointment to be given to each of the appraisers, fixing the hour at which they are to meet at the office of the auditor, or some justice of the peace therein named.

SEC. 943. If the appraisers are not all present within one hour of the time thus fixed, the auditor or justice, as the case may be, shall fill the vacancy by the appointment of others. The appraisers must be sworn to discharge their duty faithfully and impartially.

If, however, upon the absence of one of the appraisers the others adjourn to a day when all will be present, their action is not necessarily invalid for that reason (61 Iowa, 89).

SECTION 944. Should the report not be filed in time, or should any other good cause for delay exist, the auditor may postpone the time for final action on the subject, and may, if expedient, appoint other commissioners.

SEC. 945. Should no damages be awarded the applicant therefor, the whole of the cost growing out of his application shall be paid by him.

#### IV. FINAL ACTION IN THE ESTABLISHMENT, VACATION OR ALTERATION OF HIGHWAYS.

SECTION 946. When the time for final action arrives, the board of supervisors may hear testimony, receive petitions for and remonstrances against the establishment, vacation or alteration, as the case may be, of such highway, and may establish, vacate, or alter, or refuse to do so, as in their judgment, founded on the testimony, the public good may require. Said board may increase or diminish the damages allowed by the appraisers, and may make such establishment, vacation, or alteration, conditioned upon the payment in whole or in part of the damages awarded, or expenses in relation thereto.

When two applications are made for substantially the same road, by different routes, they may be considered together (26 Iowa, 85).

Where the establishment is conditioned upon the payment of the expenses, the order need not specify the time for such payment (*ibid*).

If an appeal is taken from the action of the board allowing damages, and the district court increase the amount allowed, the board may reconsider their action, and deny the application for the highway (47 Iowa, 32). This section does not contemplate damages for the vacation of a highway (61 N. W. Rep. 175)

Where the auditor improperly locates a highway, the board may set aside his action and vacate the highway thus wrongly established (45 Iowa, 482).

And if the application be dismissed, the board is not precluded for all time from the establishment of a road on the same line (64 Iowa, 198).

When the board has once concluded upon the order contemplated in this action, and the amount of damages, such action is in the nature of an adjudication of the matter in controversy, and the same matter cannot be brought in question in a new proceeding, before the board; it must be appealed (35 Iowa, 578). And a failure of a party to claim his damages within a prescribed time, will not admit his objection to the establishment of the road on the ground that his property is taken without compensation (7 Iowa, 248; *ibid*, 418; 28 Iowa, 469; 36 Iowa, 354).

The damages to the land owner do not include the timber, as that remains his property (9 Iowa, 594). If he is dissatisfied with this appraisalment, he may have his damages assessed by a jury of twelve by appeal (65 Iowa, 566).

When an order vacating a highway is made it should be absolute, not conditional, or the public right will continue (52 N. W. R., 116).

The action of the board in respect to damages can be reviewed only on appeal, as provided in section 959.

SECTION 947. In the latter case, a day shall be fixed for the performance of the condition, which must be before the next session of the board, and if the same is not performed by the day thus fixed, the board shall, at such session, make some final and unconditional order in the premises.

SEC. 948. Any order made or action taken in the establishment of a highway, shall be entered in the highway record, distinguishing between those made or taken by the auditor, and those by the board of supervisors.

SEC. 949. After the highway has been finally established, the plat and field notes must be recorded by the auditor, and he shall certify the same to the township clerk, and the township clerk shall certify to and direct the supervisor of highways to have the same opened and worked subject to the provisions of the next section.

SEC. 950. A reasonable time must be allowed to enable the owners of land to erect the necessary fences adjoining the new highway; and when crops have been planted or sowed before the highway is finally established, the opening thereof shall be delayed until the crop is harvested.

Refusal of the owner of the land to remove the fences where the newly established highway crosses his land, does not subject him to a criminal prosecution for obstruction of highway until a reasonable time after he shall have been notified by the supervisor (32 Iowa, 189).

When the road supervisor, at the request of the land owner, slightly deflected from the original line, the public may acquire rights in the road thus laid out, and a supervisor may remove the fence therefrom (62 Iowa, 37).

SECTION 951. The rights and interests of minor and insane persons, in relation to the establishment, vacation, and alteration of highways, and all matters connected therewith, are under the control of their guardians.

SEC. 952. All public streets of towns or villages not incorporated, are a part of the highway; and all supervisors of highways or persons having charge of the same, in the respective districts of such towns or villages, shall work the same as provided by law.

SEC. 953. Such portions of all highways as lie within the limits of any city or incorporated town shall conform to the direction and grade, and be subject to all regulations of other streets in such town or city.

The streets and alleys within the limits of an incorporated town or city are under the control of the municipal government, but the streets of an unincorporated town are a part of the highways of the county, and are under the control of the supervisors (72 Iowa, 173).

### **Highways Through State Lands for Use of State Institutions.**

The trustees or the commissioners of any of the institutions belonging to this state may vacate, alter, change, or establish public highways through the lands belonging to the state and for the use of such institutions as to the said board of trustees or commissioners may seem for the best interests of the state and the public, subject however to the approval of the board of supervisors of the county or the city council of the city wherein such lands are situated.

Whenever said board of trustees, or commissioners and board of supervisors or city council shall make any change in said public highways by altering, vacating or establishing new highways, the same, together with a plat thereof, shall be reported to the county auditor of the county in which the land is located, and shall be by the auditor entered on his plat-book of highways in the same manner as other highways are platted.

Section 954 of the Code of Iowa, 1873, is hereby repealed. (*Chap. 45, Laws of 1896.*)



## V. HIGHWAYS ACROSS OR ALONG COUNTY LINES.

SECTION 955. The establishment, vacation or alteration of a highway, either along or across a county line, may be effected by the concurrent action of the respective boards of supervisors in the mode above described; except that the auditor of neither county can make the final order in such case. The commissioners in such cases must act in concert, and the highway will not be deemed established, vacated or altered in either county until it is so in both.

SEC. 956. Hereafter there shall be no distinction between highways heretofore known as state roads and county roads; both alike are subject to the provisions of this chapter. Highways established by the concurrent action of the board of supervisors of two or more counties, can only be discontinued by the concurrent action of the board of supervisors of the several counties in which the same may be situated, but such highways shall be treated in all other respects as provided in this title.

## VI. HIGHWAYS ALONG STREAMS TO AVOID BUILDING BRIDGES.

The board of supervisors shall have the power to change and establish highways along streams where they can avoid building a bridge or bridges over said stream, and said highway shall be placed in good traveling condition by said county board of supervisors; and all cost accruing in the establishment of said road shall be paid out of the county bridge fund.

The board of supervisors shall have power wherever such highway is necessary to be established, at their regular session, to appoint three disinterested persons to assess the damages of the same.

In all cases the party or parties aggrieved by said assessment may appeal to the circuit [district] court, but the party or parties appealing must give sufficient bond for costs, to be approved by the clerk of said court. (*Chap. 85, Laws of 1886.*)

## VII. DRAINS AND DITCHES ALONG HIGHWAYS.

Ditches or drains may be located and constructed within the limits of any public highway and on either or both sides thereof, and levees or embankments upon and along the same; *provided*, they are so constructed as not to prevent public travel thereon. The engineer or commissioner appointed to locate ditches, drains, levees or embankments, may recommend the establishment of a public highway upon and along the route of the same, and the board of supervisors may establish the same on such recommendation in the same manner as on the report of the highway commissioner. \* \* \* (*Chap. 186, Laws of 1884.*)

## VIII. HIGHWAYS ESTABLISHED BY CONSENT.

SECTION 957. Highways may be established without the appointment of a commissioner, provided the written consent of all the owners of land to be used for that purpose be filed in the auditor's office, and if it is shown to the satisfaction of the board of supervisors that the proposed highway is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only shall it be regarded as a highway.

SEC. 958. If a survey for the establishment of the highway named in the preceding section is necessary, the board of supervisors, before ordering such survey, may require the parties asking for the establishment of such highway to pay, or secure the payment of, the expenses of such survey.

## IX. ESTABLISHMENT OF PUBLIC ROADS TO MINES AND STONE QUARRIES.

By Chapter 18, laws of 1894, section 1 of chapter 34, laws of 1874 is repealed and the following enacted as a substitute therefor:

SECTION 1. Any person, corporation, joint stock association or co-partnership, owning or leasing any land not having a public or private way for ingress and egress thereto, may have established over the land of another a public way to any railway station, street or highway, not exceeding forty feet in width, by pursuing the methods provided for in the chapter to which this is an amendment; *provided* that such way shall be located on the division line or immediately adjacent thereto and in no way interfering with buildings, orchards, gardens or cemeteries, and when said road shall be constructed it shall, when passing through enclosed lands, be fenced on both sides by the person or corporation causing said road to be established.

SEC. 2. If the owner of any real estate, necessary to be taken for the purpose mentioned in this act, refuse to grant the right of way, or if such owner and the person, partnership, joint-stock association, or corporation seeking to have such way established, cannot agree upon the compensation to be paid for the same, the sheriff of the county in which said real estate may be situated shall, upon the application of either party, appoint six disinterested freeholders of the county, not interested in a like question, who shall inspect said real estate, and assess the damage which said owner will sustain by the appropriation of said land for such public way, and make and report in writing to the sheriff of said county, and if the applicant for such public way shall at any time before entering upon said real estate, for the purpose of constructing such way, pay to the sheriff, for the use of said owner, the sum so assessed and returned to him, as aforesaid, said highway may be at once constructed and maintained over and across said premises.

SEC. 3. In proceeding under this act, the application to the sheriff, the duty of the commissioners, the time and manner of assessing the damages, the giving of notice thereof to residents and non-residents, the power of guardians to settle and convey, the making and returning of appraisement, the selection of talesmen, the payment of the costs of assessment, the report of the commissioners, the recording thereof, the right of appeal, the proceedings relating thereto, the result of non-user, the rights and duties as to other highways, are and shall be the same as provided in the section of the Code numbered twelve hundred and forty-five to and including twelve hundred and sixty-eight, and the provisions of all of said sections, so far as applicable, are declared to be a part of this act, except that the report of the commissioners, and record thereof, shall confer no title to the applicant for the land taken for the highway, but shall be presumptive evidence of the establishment of such way.

SEC. 4. Any owner, lessee, or possessor of lands having coal, stone, lead or other mineral thereon, who paid the damages assessed for highways established under this act, may construct, use, and maintain a railway on such way, for the purpose of reaching and operating any quarry or mine on such land, and of transporting the products thereof to market. In the giving of the notices required by this act, the applicant shall state whether a railway is to be constructed and maintained on the way sought to be established; and if it be so stated the jury shall consider that fact in the assessment of damages.



## X. MANNER OF CONDEMNATION—NOTICE.

SECTION 1245. The application to the sheriff shall be in writing, and the freeholders appointed shall be commissioners to assess all damages to the owners of real estate in said county, and said corporation, or the owner of any land therein, may, at any time after their appointment, have the damages assessed in the manner herein prescribed by giving the other party five day's notice thereof in writing, specifying therein the day, and hour when such commissioners will view the premises, which shall be served in the same manner as original notices.

A mortgagee whose mortgage is of record is a necessary party to such proceedings or he will not be bound thereby (38 Iowa, 463; 50 Iowa, 663). The jury can only assess the damage for lands taken by a railroad, not for injury to property abutting on a street (33 N. W. R., 149).

SECTION 1246. If the owner of any land is a minor, insane or other person under guardianship, the guardian of such minor, insane or other person, may, under the direction of the circuit (district) judge, agree and settle with said corporation for all damages, by reason of the taking of such lands for any of the purposes aforesaid, and may give valid conveyances of such land.

SECTION 1247. If the owner of such lands is a non-resident of the county in which the same are situate, no demand of the right of way or other purpose for which such lands are desired shall be necessary, except the publication of a notice which may be in the following form:

### No. 7.—NOTICE FOR THE APPLICATION OF LANDS FOR RAILWAY PURPOSES.

To [here insert the name of each person whose lands are to be taken or affected] and to all persons having any interest in or owning any of the following real estate [here describe the land by congressional numbers in tracts not exceeding one-sixteenth of a section, or if the land consists of lots in a town or city, by the numbers of the lot and block].

You are hereby notified that the.....has located its railway over the above described real estate and desires the right of way over the same, to consist of a strip or belt of land.....feet in width, through the center of which the center line of said railway will run, together with such other land as may be necessary for berms, waste banks, and borrowing pits, and for wood and water stations (or desires the same for the purposes mentioned in sections 1242 and 1243 of this chapter, as the case may be), and unless you proceed to have the damages to the same appraised on or before the.....day of....., A. D. 18..., (which time must be at least four weeks after the first publication of the notice) said company will proceed to have the same appraised on the.....day of....., (which must be at least eight weeks after the first publication of the notice) at which time you can appear before the appraisers that may be selected.

.....*Railway Company.*  
By.....*Attorney or.....Agent.*

The persons whose property is affected must be notified by name (21 N. W. R., 767).

SECTION 1248. Said notice shall be published in some newspaper in the county, if there be one, if there is none, then in a newspaper published in the nearest county through which the proposed railroad is to run, for at least eight successive weeks prior to the day fixed for the appraisement at the instance of the corporation.

## XI. RAILROADS CROSSING HIGHWAYS.

SECTION 1262. Any such corporation may raise or lower any turnpike, plank road, or other highway, for the purpose of having its railway *cross* over or under the same; and in said cases said corporation shall put such highway, as soon as may be, in as good repair and condition as before such alteration.

Where bridge and approaches are erected by a railway company in crossing a city street below grade, for the accommodation of travel over their track, the company must keep bridge and approaches in safe condition (66 Iowa, 422; 82 Iowa, 528; 54 N. W. R., 244).

SECTION 1263. If the supervisor, trustees, city council, or other person having jurisdiction over such highway require further or different repairs or alterations made thereon, or, if the same, in their opinion, is unsafe, they shall give notice thereof in writing to any agent or officer of the corporation, and if the parties are unable to agree respecting the same, either may apply by petition, setting out the facts to the circuit (district) court, or judge thereof, and such court or judge shall cause reasonable notice to be given the adverse party of the application; the petition shall be filed in the clerk's office, and may be answered as in other cases. The court shall determine the matter in a summary way and make the necessary orders in relation thereto, giving such corporation a reasonable time to comply therewith, and upon failure to do so, said court may enjoin the corporation from using so much of its road as interferes with any such highways, and the court may award costs in favor of the prevailing party.

SEC. 1264. Every such corporation when employed in raising or lowering any highway, or in making any other alteration by means of which the same may be obstructed, shall provide and keep in good order suitable temporary ways to enable travelers to avoid or pass such obstructions.

SEC. 1266. Every such corporation shall maintain and keep in good repair all bridges, with their abutments, which it may construct for the purpose of enabling its railway to pass over or under any turnpike, highway, canal, water course, or other way.

SEC. 1267. Every such corporation shall be liable for all damages sustained by any person in consequence of any neglect of the provisions of this chapter.

Held, not applicable to liability of the corporation for acts of those not its agents or servants (23 Iowa, 522).

SECTION 1269. When any corporation or person desires to construct a canal, turnpike, graded, macadamized or plank road or a bridge, as a work of public utility, although for private profit, such corporation or person may take such private property as may be deemed necessary for the right of way, not exceeding one hundred feet in width, by pursuing the course prescribed in this chapter, all the provisions of which are made applicable in similar cases.

\* \* \* \* \*

SEC. 1288. Every corporation constructing or operating a railway, shall make proper cattle-guards where the same enters or leaves any improved or fenced land, and construct at all points where such railway crosses any public highway, good,

sufficient and safe crossings, and cattle-guards, and direct at such points at a sufficient elevation from such highway to admit of free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for the cars; and any railway company neglecting or refusing to comply with the provisions of this section, shall be liable for all damages sustained by reason of such neglect or refusal, and in order for the injured party to recover, it shall only be necessary for him to prove such neglect or refusal.

It is the duty of the company to repair and keep crossings in good and safe condition (42 Iowa, 224).

## XII. APPEALS FROM BOARD OF SUPERVISORS ON ALLOWING OR REJECTING CLAIMS FOR DAMAGES.

SECTION 959. Any applicant for damages claimed to be caused by the establishment of any highway, may appeal from the final decision of the board of supervisors to the circuit [district] court of the county in which the land lies; but notice of such appeal must be served on the county auditor within twenty days after the decision is made. If the highway has been established on condition that the petitioners therefor pay the damages, such notice shall be served on the four persons first named in the petition for the highway, if there are that many who reside in the county.

The question of damages, whether as to amount, or whether any damages shall be allowed, should be reviewed on appeal, not *certiorari* (see note, section 946), and an appeal lies from the action of the board denying any damages (9 Iowa, 40; 37 Iowa, 184). Upon appeal the question of damages is tried *de novo* (18 Iowa, 327), and without asking the board to set aside the report of the appraisers (25 Iowa, 214). The appeal must be taken within twenty days from the date of the order contemplated in section 946 (42 Iowa, 385). The notice required to be made upon the petitioners, must be upon the person himself, not his wife (50 N. W. Rep., 678).

The board of supervisors acting upon a claim for and allowing damages, is a tribunal, and its action in the matter a civil case, and appeals therefrom are governed as appeals from justice's courts (71 Iowa, 385).

A service of the notice, contemplated in the above section, upon a less number than therein specified does not give the court jurisdiction (42 N. W. R., 183).

SECTION 960. An appeal may also be taken by the petitioner for the highway as to amount of damages, if the establishment of the highway has been made conditional upon his paying the damages, by his serving notice of such appeal on the county auditor and applicant for damages within twenty days after the decision of the board of supervisors, and filing a bond in the office of such auditor, with sureties to be approved by him, conditioned for the payment of all costs occasioned



by such appeal, unless the appellant fails to recover a more favorable judgment in the circuit [district] court than was allowed him by such board.

The notice of appeal must be served within twenty days upon the auditor; and also upon the applicant for damages within the same time (48 Iowa, 486).

SECTION 961. In the cases contemplated in the two preceding sections, the auditor shall, within ten days after the notices aforesaid are served and filed in his office, make out and file in the office of the clerk of said court, a transcript of the papers on file in his office and proceedings of the board in relation to such damages. The claimant for damages shall be plaintiff, and the petitioner for the highway defendant, except the damages have been ordered paid out of the county treasury, in which case the county shall be defendant.

SEC. 962. The amount of damages the claimant is entitled to, shall be ascertained by said circuit [district] court in the same manner as in actions by ordinary proceedings, and the amount so ascertained shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk to the board of supervisors, who shall, thereafter, proceed as if such amount had been by them allowed the claimant as damages.

When the district court has determined the amount of damages, the board may proceed to final action, the same as if it had originally allowed the damages (42 Iowa, 385).

If the amount of damages is increased on appeal, the board, upon a reconsideration of the matter, may refuse to establish the highway (47 Iowa, 32).

Section 963 of the Code of 1873 was repealed by Chapter 44, Laws of 1896, and the following enacted in lieu thereof:

SECTION 963. If the appeal be taken by the petitioner he shall pay the costs, unless the claimant recovers a less amount than was allowed him by the board. In all other cases the taxing of the costs shall rest in the discretion of the court.

When the owner of land appeals from the award of damages, he is entitled to his costs, though the amount of damages awarded in the district court is not larger than that given by the appraisers (47 Iowa, 102).

The payment of the costs cannot be enforced until they have been adjudged; but the filing fee must be advanced (71 Iowa, 180).

### XIII. LOST FIELD NOTES.

SECTION 964. When, by reason of the loss or destruction of the field notes of the original survey, or in cases of defective surveys or record, or in cases of such numerous alterations of any highway since the original survey, that its location cannot be accurately defined by the papers on file in the proper office, the board of supervisors of the proper county may, if they deem it necessary, cause such highway to be re-surveyed, platted, and recorded as hereinafter provided.



The board may order a re-survey, where the necessary steps have been taken to establish a road, where the clerk failed to record the field notes, and no record of the final order was found (20 Iowa, 124); but if no highway has been formally established, a re-survey is of no effect (52 Iowa, 660). Where the recorded field notes of an original survey are not so obscure, repugnant, or otherwise defective, that they cannot be traced upon the earth, a re-survey should not be had (59 Iowa, 554).

Unless the highway was originally established, no re-survey can be ordered (61 Iowa, 18); but where a portion of the record of the original survey was lost, and a re-survey was shown by the evidence to correspond with the original survey, the same might be adopted and acted upon (72 Iowa, 57).

SECTION 965. A copy of the field notes, together with a plat of any highway surveyed under the provisions of the preceding section, shall be filed in the office of the county auditor, and thereupon, he shall give public notice by publication in some newspaper published within the county, or, if no paper is published in his county, by posting such notice in five of the most public places in the vicinity of such survey, that such survey has been made and that at some term of the board of supervisors, not less than twenty days from the publication, they will, unless good cause be shown against so doing, approve of such survey and plat, and order them to be recorded as in cases of the original establishment of a public highway.

SEC. 966. In case objection shall be made by any person claiming to be injured by the survey made, the board of supervisors shall have full power to hear and determine upon the matter, and may, if deemed advisable, order a change to be made in the survey. Upon the final determination of the board, or in case no objection be made at the term named in the notice of the survey, they shall approve of the same and cause the field notes and plat of the highway to be recorded as in case of the establishment, or alteration of highways, and thereafter such records shall be received by all courts as conclusive proof of the establishment and existence of such highway, according to such survey and plat.

SEC. 967. If the same has not been heretofore done in any other manner, the county auditor shall, within six months after this code takes effect, cause every highway in the county, the legal existence of which is shown by the records and files of his office, to be platted in a book to be obtained and kept for that purpose, and known as the "highway plat book." Each township shall be platted separately, on a scale of not less than four inches to the mile, and such auditor shall have all changes in or additions to the highways legally established, immediately entered upon said plat-book, with appropriate references to the files in which the papers relating to the same may be found.

SEC. 968. Within the time aforesaid, the auditor shall furnish to the township clerks a certified copy of said plat-book, so far as the same relates to their respective townships, which shall be carefully preserved in the office of said clerks. The auditor shall notify said clerks of all changes made in the plat-book relative to the

highways, so far as the same relate to their townships respectively; on receipt of which, said clerk shall immediately make corresponding changes on the maps in their respective offices.

By section 972 the township clerk shall furnish the supervisor with a plat of his district.

#### XIV. ESTABLISHMENT OF HIGHWAYS BY DEDICATION AND PRESCRIPTION.

In addition to the statutory provisions relating to the establishment of highways, they may derive their existence from a dedication of the land to public use, and the acceptance thereof by the public; such dedication may be in writing, by parol, or any other acts inconsistent with any other inference (27 Iowa, 15; 34 Iowa, 144, 478); and it may also be established without proof of an express grant by the owner. Long use by the public, and the acquiescence of the owner therein, are evidence of a dedication; and such right acquired by use by the public, with the knowledge of the owner, becomes perfect in ten years (19 Iowa, 125; 22 Iowa, 457; 36 Iowa, 485; 39 Iowa, 23); but a local or timber road requires much stronger evidence of dedication or prescriptive right than an acknowledged highway which is constantly traveled (22 Iowa, 457; 26 Iowa, 377; 29 Iowa, 73); and to constitute a highway by prescription, based upon use by the public for the required length of time, with the knowledge and consent of the owner of the soil, there must be an absence of proof that the highway was so used by leave, favor, or mistake.

If it be shown that the apparent consent of the owner was based upon mistake as to the location of the section line on which it was intended the highway should run, no highway by prescription will be gained thereby (30 Iowa, 258; 34 Iowa, 144; 20 Pick., 291); continued, uninterrupted adverse use by the public, is essential to establish such right (40 Iowa, 637; 32 Ill., 278; Angel on Highways, 151; 15 Ill., 241).

If the owner through whose land a used way lies, agrees that it may be continued as a highway if his neighbors will fence it, and they do so and continue to use the way, the assent of the owner thus expressed and acted upon is a dedication of the road to the public (28 N. W. Rep., 650; 69 Iowa, 382).

The owner of land, under the belief that a certain highway used by the public was a legally established highway, proposed that if the route of the highway be so changed as to run along the line of his

land he would give the right of way; it was accordingly changed and used by the public for several years, and considerable expenditures made thereon in its improvement; it was held that the dedicator or his assignee could assume possession again, upon its being ascertained that the old highway was not a legal highway (37 Iowa, 250).

When the public have traveled for more than ten years a route deviating slightly from that originally established, by reason of an obstacle in the surveyed route, and pursuant to some arrangement with adjacent owners and not by mistake merely, such traveled route becomes a highway by prescription (36 Iowa, 614); but the dedication of a highway for private purposes will not establish a public highway by prescription (36 Iowa, 485).

## IXV. CATTLE-WAYS ACROSS HIGHWAYS.

Upon application by any person to the board of supervisors of any county for permission to construct a cattle-way across, over or under any public highway, the board may grant the same; provided said cattle-way shall not interfere with the travel upon such highway; but the person who applied for such cattle-way shall construct the same at his own expense, and be responsible for all damages that may arise from its construction or from the same not being kept in good condition, and that the grade of the highway over the cattle-way shall not exceed one foot in ten.

If the person on whose land such cattle-way is constructed, fails to keep the same in good repair, then it shall be the duty of the road supervisor to make all repairs necessary and charge the same to the owner of the land upon which such cattle-way is constructed, and upon his refusal or failure to pay, the supervisor shall recover the same in an action brought in his own name in any court having competent jurisdiction; which money, when collected, shall be expended for improving or repairing the public highway in the road district where such cattle-way is constructed: Provided, that no person shall construct any cattle-way so as to obstruct the freedom of the public in watering at any running stream (Laws of 1876, chapter 111).

Any person or persons desiring to build a cattle-way across a public highway under any township bridge, may apply to the board of trustees of the township wherein such bridge is located, at the regular April meeting of such board. The said board of trustees may grant such right upon such application, and prescribe such conditions in regard to the maintenance of said bridge and cattle-way as they may deem just and proper (Act of 22d G. A., chapter 92, section 1).



## XVI. SIDEWALKS ON HIGHWAYS.

(CHAPTER 147, LAWS OF 1884.)

SECTION 1. That it shall be lawful for any owner of land adjoining or abutting on a public road or highway outside the limits of any city or town, to build and construct a sidewalk on and along said highway for his own use and for the use of the public traveling on foot, that said sidewalk shall not exceed four feet in width and shall be located along the side of the highway, and may be constructed of any material suitable for a foot walk, *provided*, that said sidewalk shall not be so constructed as to interfere with the proper use and enjoyment of any lands or premises along which it passes, and *provided further*, that the person building such walk shall keep the same in good repair, and shall be liable for all injuries occasioned by his failure to keep the same in repair.

SEC. 2. Any person who shall destroy, injure, or drive or ride upon a sidewalk, so constructed or heretofore constructed, except at highway crossings, shall be deemed guilty of a misdemeanor and shall be fined not less than five dollars for each offense, and shall be liable to the party who has built or maintained said sidewalk for all damages.

## XVII. STREET RAILWAY COMPANIES.

Chapter 32 of the acts of the Eighteenth General Assembly, as amended by chapter 21 of the acts of the Twenty-third General Assembly, granting the right of way to street railway companies over the highways adjacent to any city or incorporated town, is as follows:

SECTION 1. That any street railway company, now or hereafter organized under the laws of this state, to operate a street railway in any city or incorporated town in this state for the purpose of extending its railway beyond the limits of such city or town, may locate, build and operate either by animal or motor power its road over and along any portion of a highway which is of a width of one hundred feet or more. In such cases said company, as soon as practicable, shall put said highway in as good repair and condition, as the same was before its use for the purpose herein contemplated; and boards of supervisors are hereby authorized to accept for highway purposes, under this act, conveyances of land adjoining any highway, or part thereof, sufficient to increase said highway to the width of one hundred feet; *provided however*, that in any county within which any such street railway company desires to operate its line of railway over any highway, of not less than sixty-six feet in width, for a distance of not exceeding two miles beyond the limits of any city or incorporated town to any state institution there situated, said railway to be operated by animal or electric power only, the board of supervisors of such county may grant the right to such street railway so to operate its line over said street not exceeding two miles or less, and under such limitations, rules and regulations as said board of supervisors may prescribe; *provided further*, that said board of supervisors shall have the power, and such power is hereby reserved to them, to rescind, amend or modify such grant, limitations, rules and regulations at any time it may so determine.

SEC. 2. Unless the owners of land abutting each side of said highway, shall consent to its use, as contemplated in section 1, said railway shall pay all damages sustained by such land owners by reason of building said road, which damages shall be ascertained and paid in the same manner as provided for taking private property for works of internal improvement. Said company shall also be liable for all damages sustained by any one resulting from the carelessness of its officers, agents, or servants in the construction or operation of its railway.

## XVIII. DUTIES OF TOWNSHIP TRUSTEES IN REFERENCE TO HIGHWAYS.

SECTION 969. The township trustees of each township shall meet on the first Monday in April, or as soon thereafter as the assessment book is received by the township clerk, and on the first Monday in November in each year. At the April meeting said trustees shall determine:

1. Upon the amount of property tax to be levied for highways, bridges, guide-boards, plows, scrapers, tools, and machinery adapted to the construction and repair of highways, and for the payment of any indebtedness previously incurred for highway purposes, and levy the same, which shall not be less than one nor more than four mills on the dollar on the amount of the township assessment for that year;

2. Whether any portion of said tax shall be paid in labor, and if so, what portion may be so paid;

3. Upon the amount that will be allowed for a day's labor done by a man, and by a man and team, on the highway;

4. At the November meeting said trustees shall divide their respective townships into such number of highway districts as they may deem necessary for the public good, and at said meeting they shall settle with the township clerk and supervisors of highways. (*As amended by Chap. 22, Laws of 1894, and Chap. 43, Laws of 1896.*)

Portions of the highway embraced within a city are not subject to a division into road districts, and the trustees cannot tax such portions (47 Iowa, 452). Road tax may be levied upon the property of railway companies, though such property may not be placed upon the assessor's book (45 Iowa, 168).

SECTION 970. The trustees shall set apart such portion of the tax specified in the preceding section of this chapter as they deem necessary for the purpose of purchasing the tools and machinery, and paying for the guide-boards mentioned in said section, and the same shall constitute a general township fund; and such trustees shall require the township clerk to give bond in such sum as they deem proper, conditioned as the bonds of county officers, which bond and the sureties thereon, shall be approved by said trustees. Said clerk shall take charge of and properly preserve and keep in repair such tools, implements and machinery as may be purchased with said general township fund, and shall have authority to determine at what time the supervisors of the several districts may have the custody and use of the same, or any part thereof, and shall be responsible for the safe keeping of the same, when not in the custody of some one of the supervisors for

use in working the highways in his district, and shall receive such compensation as the trustees shall provide to be paid out of such fund.

The tools and machinery necessary for the construction and repair of highways are to be owned by the township, and not by the several road districts (45 Iowa, 520).

The "general fund" is the money set apart as here contemplated, and does not include money received by the clerk from the county treasurer under section 976 (45 Iowa, 519). The trustees cannot buy implements, etc., for the district upon credit. The appropriation must precede the purchase (58 Iowa, 384; 58 Iowa, 396; 61 Iowa, 423).

The township clerk may maintain an action against a road supervisor for moneys paid him belonging to the general township fund, if he refuses to pay on demand (59 Iowa, 376) and he may sue on the bond of such delinquent supervisor (62 Iowa, 468).

SECTION 971. The trustees shall order and direct the expenditure of the general township fund.

## XIX. TAXATION FOR ROAD PURPOSES IN MUNICIPALITIES.

(CHAPTER 158, LAWS OF 1882.)

SECTION 1. That all property now subject to taxation in any city or town which by law is not subject to taxation for general municipal purposes, shall nevertheless be liable to taxation for road purposes as may be provided by the council of such city or town, but not exceeding the rate of five mills upon the dollar of the assessed valuation thereof.

## XX. DUTIES OF TOWNSHIP CLERK IN REFERENCE TO HIGHWAYS.

SECTION 972. The township clerk shall furnish each supervisor, to be by him transferred to his successor in office, with a copy of so much of the map or plat furnished such clerk by the auditor as relates to the highways in the district of such supervisor, and, from time to time, to mark thereon the changes in or additions to such highways as the same are certified to him by the auditor.

This map is not essential to the authority of the supervisor, and gives him no additional power (37 Iowa, 448).

The map referred to in section 972, to be delivered by the township clerk to the highway supervisor, confers no additional authority upon him; and is no authority for his action; and in an action against him for trespass for throwing down fences of another while claiming to open a highway, he cannot justify under the map, although it purports to contain all the legal highways in the township and represents



the line in question to be a legal highway. The rule that a ministerial officer is not liable for the execution of legal process does not apply; and he must show that in fact a highway did exist either *de facto* or *de jure* (34 Iowa, 494).

SECTION 973. The township clerk shall, within four weeks after the trustees have levied the property tax; make out a tax list for each highway district in his township, which list shall be in tabular form and in alphabetical order, having distinct columns for land, town lots, and personal property, and carry out in a column the amount of the tax on each piece of land, and town lot, and on the amount of personal property belonging to each individual; and he shall carry out the amount of tax, to be paid in money, due from each individual in a column by itself; which list shall contain the names of all persons required to perform two days' labor upon the highway as poll tax; and to enable the township clerk to make out such tax list, the assessor shall furnish the township clerk of each township, on or before the first day of April of each year, a correct copy of the assessment list of said township for that year, which list shall be the basis of such tax list. The county auditor shall furnish the several township clerks of his county with printed blanks necessary to carry into effect the provisions of this chapter.

Under section 973 railroads are subject to assessment for road tax (41 Iowa, 63).

SECTION 974. The township clerk shall make an entry upon such tax list showing what it is for, what highway district, and for what year, and shall attach to the list his warrant under his hand, in general terms, requiring the supervisor of such district to collect the taxes therein charged as herein provided; and no informality in the above requirements shall render any proceedings for the collection of such taxes illegal. The clerk is hereby required to cause such lists to be delivered to the proper supervisors of his township within thirty days after the levy, and take receipts therefor; and such list shall be full and sufficient authority for the supervisor to collect all taxes therein charged against resident property-holders in his district.

The entry should be written on the back of the list and near the top when folded, and may be as follows:

Highway tax list for year 18..., for highway district No....., .....Township,  
.....county, Iowa.

The warrant of the township clerk may be attached to the list at the most convenient place, and may be, in form, as follows:

#### No. 8—WARRANT OF TOWNSHIP CLERK TO COLLECT TAXES.

To..... Supervisor of Highway District No....., in .....township,  
.....county, Iowa.

You are hereby authorized and commanded to collect the taxes charged in the within list as by statute in such cases made and provided.

Given under my hand this.....day of.....18... Township Clerk.

When the clerk delivers the tax list to the supervisors, he is required to take a receipt therefor from each supervisor receiving such list, which receipt may be in the following form:

## No. 9.—SUPERVISOR'S RECEIPT FOR HIGHWAY TAX LIST.

Received of.....clerk of.....township.....county, Iowa, the tax list for highway district number....., in.....township, for the year 18..., amounting to.....dollars and.....cents.  
 .....Supervisor Highway Dist. No.,...

SECTION 975. The township clerk shall, on or before the second Monday in November in each year, make out a certified list of all lands, town lots and personal property on which the highway tax has not been paid, and the amount of tax charged on each parcel of land, town lot, or personal property, designating the district in which the same is situated, and transmit the same to the auditor, who shall enter the amount of tax to each piece of land or town lot and person taxed for personal property in the column ruled for that purpose, the same as other taxes, and deliver the same to the county treasurer, charging him with the same, which shall be collected by such treasurer in the same manner that county taxes are collected; and in case the township clerk shall fail or neglect to make such return, he shall forfeit and pay to the use of the township, for highway purposes, a sum equal to the amount of tax on said land, which may be collected by suit on his official bond before any court having competent jurisdiction. (*See Sec. 4, Chap. 48, Laws of 1896, on page 45 hereof.*)

The taxes are not rendered invalid because of some irregularities on the part of the clerk, made in the returns, or in the manner of placing the taxes upon the treasurer's books (39 Iowa, 124; *ibid*, 151; 41 Iowa, 153).

SECTION 976. The county treasurer shall, on the last Monday in April and October of each year, pay to the township clerk all the highway taxes belonging to his township which are at such times in his hands, taking the duplicate receipts of such clerk therefor, one of which shall be delivered by such treasurer, on or before the first Monday in May and November in each year, to the trustees.

These taxes when collected cannot be appropriated by the county nor disbursed by it; and if they have been illegally collected they cannot be recovered back in an action against the county by a taxpayer (51 Iowa, 522).

The township clerk may maintain an action to recover money in hands of third persons belonging to his township (57 Iowa, 11); he is also the proper party to recover on supervisors' bonds for failure to account for taxes (59 Iowa, 376; 62 Iowa, 468). The clerk also is the proper person to make distribution of moneys paid him by the county treasurer, except the general fund (45 Iowa, 519), and a road supervisor who collects of the money is liable in an action on his bond, though he may have expended the same for road purposes (59 Iowa, 376).

By chapter 36, Laws of 1880, the county treasurer is required to furnish the township clerk a statement showing the amount of money collected and paid over for each road district.

## (CHAPTER 36, 18 GENERAL ASSEMBLY, SECTIONS 1 AND 2.)

SECTION 1. It shall be the duty of the auditor to provide a column which shall show the road districts to which the highway taxes belong, as transmitted by the township clerk, according to section nine hundred and seventy-five of the Code of 1873.

SEC. 2. It shall be the duty of the county treasurer, when he pays to the township clerk, highway taxes, according to section nine hundred and seventy-six, to furnish at each time and to each clerk, a statement showing the road district or districts to which it belongs.

## XXI. HIGHWAY SUPERVISORS, ELECTION, QUALIFICATION AND DUTIES.

No person shall vote for supervisor of highways of any highway district other than that in which he resides at the time of election. Votes for highway supervisors are to be separate and deposited in separate ballot boxes or compartments (Laws of 1878, chap. 71).

SECTION 977. The supervisor must reside in the district for which he is elected or appointed, and no person shall be required to serve as supervisor who is exempt from performing labor on the highway.

Supervisors are personally liable in damages for carelessness or negligence in performing their powers, or in diverting a stream of water from an adjacent land owner, caused in making an alteration in the highway (24 Iowa, 336).

The supervisor may be personally guilty of trespass in removing an obstruction, if not done for the purpose of opening the highway, but to do injury to the owner (37 Iowa, 446). He may be restrained by injunction from repairing the highway in such a way as to interfere with the rights of an adjoining owner (36 Iowa, 583); as to removing shade trees (see section 989).

SECTION 978. Each supervisor shall be required to give bond in such sum and with such security as the township clerk may deem requisite, and conditioned that he will faithfully and impartially perform all the duties devolving upon him, and appropriate all moneys that may come into his hands by virtue of his office according to law; and in case of a vacancy occurring in any highway district within a township, the township clerk shall fill such vacancy by appointment.

The bond above prescribed may be as follows:

## No. 10.—HIGHWAY SUPERVISOR'S BOND.

*Know all men by these presents:* That.....as principal, and.....as sureties, of.....county, Iowa, are held and firmly bound unto the state of Iowa, for the use of the highway fund in highway district number.....in.....township, .....county, Iowa, in the penal sum of.....dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs and assigns, firmly by these presents.



The condition of the above obligation is such: That whereas, the above bounden .....has been elected (or appointed) supervisor in highway district number..... in.....township.....county, Iowa:

Now, if the said.....will faithfully and impartially perform all the duties devolving upon him, and appropriate all moneys that may come into his hands by virtue of his office, according to law, then this obligation to be void, otherwise to be in full force and virtue.

Signed this.....day of.....18... ..Principal.

Approved this.....day of.....18... ..  
.....Township Clerk. .... } Sureties.

STATE OF IOWA,.....County, ss.

I,.....solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially discharge the duties of the office of highway supervisor according to the best of my ability.

Subscribed and sworn to by.....before me this.....day of.....  
A. D. 18... ..

IN THE APPROVAL of official bonds, the clerk cannot exercise too much care. Supervisors frequently have considerable money come into their hands by virtue of their office, and should the same be squandered or misapplied, and the signers of the bond be irresponsible, the clerk may become liable therefor.

THE PENALTY specified in the bond must not be less than double the amount the supervisor will be likely to have in his hands at any one time, which amount may readily be ascertained from the tax list and other records in the clerk's possession.

Any moneys coming into the hands of the supervisors should be paid to the township clerk, not to the trustees (62 Iowa, 468).

SECTION 979. The township clerk shall notify each supervisor within five days after his election or appointment, and if he shall fail to appear before said township clerk, unless prevented by sickness, within ten days, and give bond and take the oath of office, he shall forfeit and pay the sum of five dollars, and in case of his failing or refusing to pay the same, his successor in office shall collect the said amount by suit or otherwise, and apply the same to the repairing of highways in his district.

The notice of the election or appointment of highway supervisors may be in the following form:

#### NO. 11.—NOTICE OF ELECTION OR APPOINTMENT OF HIGHWAY SUPERVISOR.

To .....: You are hereby notified that you have been elected (or appointed as the case may be) highway supervisor for highway district number..... in.....township, .....county, Iowa, and you are required to appear before the undersigned and give bond and take the oath of office within ten days after the service of this notice; and on your failure to do so, you will be liable to pay a forfeiture of five dollars.

Given under my hand this.....day of....., 18... ..  
.....Township Clerk.

The notice may be served by the same person and return made in the same manner, as other notices of a like character are served and returned (See forms Nos. 3, 4 and 5).

SECTION 980. The supervisor shall, within ten days after receiving the tax list specified in sections nine hundred and seventy-three and nine hundred and seventy-four, post up in three conspicuous places within his district, written notices of the amount of highway tax assessed to each tax payer in said district.

The better way is to copy off three tax lists from the list received from the township clerk and post them up, and the supervisor can then keep the original for reference.

SECTION 981. The supervisor shall cause all tax collected by him to be expended for the purposes specified in section nine hundred and sixty-nine of this code, on or before the first day of November of that year, except the portion set apart for a general township fund as provided in said section, which shall be by the supervisor paid over to the township clerk from time to time as collected, and his receipt taken therefor. (*As amended by Chap. 43, Laws of 1896.*)

The receipt may be in the following form:

No. 12.—CLERK'S RECEIPT TO HIGHWAY SUPERVISOR.

\$.....townsh., .....county, Iowa.  
Received of.....supervisor of highway district number.....in.....township, .....county, Iowa, the sum of.....dollars and.....cents, general township fund collected by him.  
.....Township Clerk.

SECTION 982. The money tax levied upon the property in each district, except that portion set apart as a general township fund, whether collected by the supervisor or county treasurer, shall be expended for highway purposes in that district, and no part thereof shall be paid out or expended for the benefit of another district.

The township trustees have no control over the road fund in the hands of the township clerk, except that part which may be set apart for general township purposes; the balance is to be expended by the road supervisor in his discretion, and he can demand and receive it from the township clerk (*Henderson vs. Simpson*, 45 Iowa, 519).

An order for expenditure of money for work in the district in which raised and in part in another is illegal (46 N.W. Rep., 1055).

SECTION 983. The supervisor shall require all able bodied male residents of his district between the ages of twenty-one and forty-five, to perform two days' labor upon the highway between the first day of April and September of each year.

SEC. 984. The supervisor shall give at last three days' notice of the day or days and place designated to work the highways to all persons subject to work thereon, or who are charged with a highway tax within his district, and all persons so notified must meet said supervisor at such time and place with such tools, implements, and teams as the supervisor may designate, and shall labor diligently

under the direction of the supervisor for eight hours each day; and for such two days' labor performed, the supervisor shall give to the person a certificate, which certificate shall be evidence that such person has performed labor on the public highway, and shall exempt such person from performing labor in payment of highway poll tax in that or any other highway district for the same year. And the supervisor shall give any person who may perform labor in payment of his highway tax, if demanded, a receipt showing the amount of money earned by such labor, which shall be evidence of the payment of said tax to the amount specified in the receipt.

Should there be any persons between the ages of twenty-one and forty-five residing in the district, whose names are not on the list, it is the duty of the supervisor to place their names on said list, and compel all such to perform labor, as required in this chapter.

A day's work shall be nine faithful hours, in those localities where chapter 200 of the 20 G. A. has been adopted (20 G. A., chapter 200, section 14, page 31).

The notice mentioned in the foregoing section may be either verbal or written. As the statute points out no manner in which the notice shall be served, it seems that any manner is sufficient, provided the person to be notified receives it, and no person can be compelled to perform the labor until such notice shall have been given.

Should it be necessary or more convenient to give a written notice, it may be in form as follows:

No. 13.—NOTICE TO PERFORM LABOR ON THE HIGHWAY.

To.....: You being subject to perform labor on the highway in this district, you are hereby notified to appear with [here state what implements], on the.....day of.....18...at...o'clock...M., at [here name the place], for the purpose of working out your said highway tax. Given under my hand this.....day of.....18...  
.....Supervisor of Highway Dist. No.....

A failure to notify the tax payer of the time and place to work out his tax will not be cause to restrain the collection of the whole tax (45 Iowa, 168).

To each person who shall have paid his highway tax, the supervisor should give a certificate or receipt, and whether paid in cash or labor, or in both, the following form will be found most convenient:

No. 14.

\$.....County, Iowa,.....18.....  
Received of.....dollars and.....cents, being in full of his Poll and Personalty Road Tax and Road Tax on.....for the year 18.....  
Paid in Labor, \$.....  
Paid in Cash, \$.....  
Total, \$.....  
Supervisor Road District No.....  
.....Twp.



SECTION 985. Each person liable to perform labor on the public highway as poll tax, who shall fail or neglect to attend, either in person or by satisfactory substitute, at the time and place appointed, with the designated tool, implement, or team, having had three days' notice thereof, or having attended, shall spend his time in idleness, or disobey the supervisor, or fail to furnish said supervisor within five days thereafter, some satisfactory excuse for not so attending, shall forfeit and pay to said supervisor the sum of three dollars for each day's delinquency, and in case of failure to pay such forfeit within ten days, the supervisor shall recover the same by action in the name of the supervisor, and no property or wages belonging to said person shall be exempt to the defendant on execution. Said judgment to be obtained before any justice of the peace in the proper township; which money when collected shall be expended on the public highway.

No person subject to work on the highways will be released from performing the required two days' labor, even should a satisfactory excuse be given for not appearing at the time required as provided above.

In municipal corporations all able-bodied male residents of the corporation between the ages of twenty-one and forty-five years, shall, between the first day of April and the first day of September each year, either by themselves or satisfactory substitutes, perform two days' labor upon the streets, alleys or highways within such corporation, at such times and places as the proper officer may direct, and upon three days' notice in writing given; the corporation may provide that for each day's failure to attend and perform the labor as required, at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding three dollars for each day's delinquency, and in case of failure to pay such forfeit within ten days the supervisor of highways or street commissioner of said corporation shall recover the same by action in the name of the supervisor of the highways or street commissioner of said corporation; and no property or wages belonging to said person shall be exempt to the defendant on execution; said judgment to be obtained before the mayor of said corporation, or any justice of the peace in the proper township; which money, when collected, shall be expended upon the streets of the corporation; and that all such sums remaining unpaid on the first day of September in each year may be treated and collected as taxes on property, and the same shall be a lien on all real property of the delinquent that may be listed for taxation, and assessed and owned by him on the first day of November of the same year (code of 1873, section 487, as amended by chapter 32, Laws of 1882).

A man who is not able-bodied is not liable to the penalty prescribed for failure to appear when summoned by the supervisor to perform labor on the highway, nor would the failure of such person to make his disabilities known to the supervisor change the rule (31 Iowa, 75).

Any person who is an active member of any fire engine, hook and ladder, hose, or any other company for the extinguishment of fire, or the protection of property at fires under control of the corporate authorities of any city or incorporated town, shall, during the time he shall continue an active member of such company, be exempt from the performance of any military duty, and from the performance of labor on the highways on account of poll tax, and from serving as a juror (code of 1873, section 1560).

SECTION 1561. Any person who has served in any company for the term of ten years, as provided in the preceding section, shall be entitled to receive from the foreman of the company of which he shall have been a member, a certificate to that effect, and on the presentation of such certificate to the clerk or recorder of the proper city or town, it shall be the duty of such clerk or recorder to file the same in his office, and to give his certificate, under the corporate seal, to the person entitled thereto, setting forth the name of the company of which such person shall have been a member, and the duration of such membership; and such certificate shall be received in all courts and places as evidence that the person legally holding the same is entitled to the exemption hereinbefore mentioned.

SEC. 1562. To entitle any person to exemption from labor on the highway before the expiration of the aforesaid term of ten years, he shall, on or before the first day of April of each year, file with the clerk or recorder of the proper city or town, a certificate signed by the foreman of the company of which said person is a member, that the person holding said certificate is an active member of said fire company, and thereupon the clerk or recorder shall enter said exemption upon the street tax list for that year.

## XXII. MILITIA.

(CHAPTER 74, LAWS 18TH G. A., 1880.)

SECTION 19. Every officer and soldier of the Iowa National Guard shall be exempt from jury duty, from head or poll tax of every description, during the term he shall perform military duty. The uniforms, arms and equipments of each member of the State Guard shall be exempt from all suits, distress, executions or sales for debt or payment of taxes.

## XXIII. LABOR ON HIGHWAYS BY THE POOR.

By section 1361 of the code, as enacted by the Eighteenth General Assembly, chapter 133, the trustees of each township shall provide for the relief of such poor persons in their respective townships as should not be sent to the poor house; and where a city is embraced within the limits of a township, the board of supervisors may appoint an overseer of the poor, who shall have within the city the powers and duties of furnishing relief. "And when in the opinion of the trustees or overseer the person asking aid, or any member of his family, is able to work, and such condition would not be oppression, they may require the person or any member of his family who is able

to work, as a condition on which relief shall be granted, to earn the relief by labor on the public highway at the rate of not to exceed sixty-five cents per day. The trustees of townships or overseers of the poor are also authorized to grant relief by furnishing food to transient persons who appear needy and who are able to work, but such relief shall not exceed the sum of forty cents per day, and they may require such able bodied persons to labor faithfully on the streets or highway at the rate of five cents an hour in payment for and as a condition of granting the relief. Said labor shall be performed under the direction of the officer having charge of working the streets or highways."

Under the criminal code of the state as expressed in section 4737, convicted criminals may be required to labor on the public highways, on or about public buildings, etc., in such locality where confined during a reasonable part of the day; the time of labor shall not exceed eight hours per day.

#### XXIV. IMPROVEMENT OF HIGHWAYS.

The following law, being chapter 200, Acts of the Twentieth General Assembly, seems to be partly *optional*, both on the part of the board of supervisors and of the voters of each township:

Sections 4 to 15, inclusive, apply only in townships adopting the plan provided by the Act—the mode of adoption being fixed by section 4—and unless thus adopted, those sections are not in force. When once adopted, it can only be changed back to the old plan after a two years' trial, as provided in section 4.

(CHAPTER 200, LAWS OF 1884, AS AMENDED BY CHAPTER 22, LAWS OF 1894.)

SECTION 1. That the board of supervisors of each county shall at the time of levying taxes for other purposes, levy a tax of not more than one mill on the dollar of the assessed value of the taxable property in their county, which tax shall be collected at the same time and in the same manner as other taxes are collected and shall be known as the county road fund, and shall be paid out only on the order of the board of supervisors for work done on the highways of the county, in such places as the board shall determine, and the county treasurer shall receive the same compensation for collecting this tax as he does for collecting corporation taxes; *provided*, that the amount levied by the board of township trustees under section 969 of the code, together with the amount thus levied, shall not be in excess of five (5) mills.

SEC. 2. The board of supervisors shall at their regular meeting in April of each year, determine from the auditor's and treasurer's books, the amount of money collected and credited to said tax fund. They shall also determine the manner in which said tax shall be expended, whether by contract or otherwise.

SEC. 3. That section 986 be and the same is hereby repealed, and [the] following adopted in lieu thereof.



SEC. 986. The supervisor shall be allowed the sum of two dollars per day for each day's labor, including the time necessarily spent in notifying the hands and making out his returns, which sum shall be paid out of the highway fund, after deducting his two days' work. When there is no money in the hands of the clerk with which to pay the said supervisor, he shall be entitled to receive a certificate for the amount of labor performed, which certificate shall be received in payment of his own highway tax for any succeeding year.

A supervisor is not entitled to an order payable in money out of funds afterwards coming into the treasury of the district; but he may have a certificate which can be used in payment of his subsequent highway taxes (89 Iowa, 476).

SEC. 4. The board of township trustees may, at their regular meeting in April, 1884, or any regular April meeting thereafter, on petition of a majority of the voters of said township, consolidate the several road districts in the township into one highway district; *provided*, however, that nothing herein contained shall be construed to prevent the trustees from again subdividing the township into sub-districts and returning to the present plan of road work, at any regular April meeting, after two years' trial of the plan provided by this act.

SEC. 5. The trustees may order the township highway tax for the succeeding year paid in money and have the same collected by the county treasurer the same as other taxes.

SEC. 6. In cases where the township shall have organized into one highway district, as contemplated in section 4 of this act, the board of township trustees shall order and direct the expenditure of all the highway funds and labor belonging or owing to the township; and to this end the trustees may let by contract to the lowest responsible bidder (should they deem him competent to the proper performance of such work) any part, or all of the work on the highways for that year, in the township, or they may appoint a township superintendent of highways, with one or more assistants, should they deem it best to do so, to superintend all or any part of such work, subject always to the direction of the township trustees; *provided only*, the said trustees shall not incur any indebtedness for such purposes, unless the same has been, or shall at the time be, provided for by an authorized levy.

SEC. 7. The trustees shall cause both the property and poll road tax belonging to the township, to be equitably and judiciously expended for highway purposes in the township highway district, and shall cause the highway to be kept in as good condition as the means at their command will admit of.

SEC. 8. The trustees shall cause the noxious weeds growing on the highways in their township to be cut twice a year, if deemed necessary to exterminate the same, and to have them cut at such times as to prevent their growing to seed; and for this purpose, the trustees may allow any land owner a reasonable compensation for destroying such weeds on the highways abutting his lands and have him credited for the same on his road tax for that year.

SEC. 9. The trustees shall fix the term of office and per diem of the superintendent of highways and his assistants, should such be employed; *provided*, the superintendent shall not be hired for more than one year at a time and his per diem shall not exceed three dollars; and that the contract shall be conditioned so that the trustees may dispense with his services at any time, when in their judgment it shall be for the best interests of the township so to do.

SEC. 10. The trustees shall cause at least seventy-five per cent. of the township highway tax to be properly expended for highway purposes by the fifteenth day of July of each year.

SEC. 11. In all cases where the one highway district plan shall be adopted, the highway funds belonging to the several road districts in the township, prior to the change, shall be placed to the credit of the general township highway fund, and all claims for work done or material furnished for road purposes and unsettled for prior to the change, shall be paid out of such funds.

SEC. 12. The trustees shall require the township clerk, contractor, and superintendent contemplated in this act, each to qualify, as other township officers, and to execute a bond with approved sureties, for twice the amount of money likely to come into their hands, respectively, by reason of this act.

SEC. 13. The trustees may receive the same compensation per day for the time necessarily spent in looking after the highways, as they do for other township business; the county treasurer shall receive the per cent. for collecting the highway taxes contemplated in this act, that he does for collecting corporation taxes; and the township clerk shall receive two per cent. of all the money coming into his hands by reason of this act, and by him paid out for road purposes.

SEC. 14. Nine hours' faithful service by a man, or man and team, shall be required for a day's work on the road; *provided*, that except on extraordinary occasions no person shall be required to go more than three miles from his place of residence to work on the roads; and for the purposes of this act, the residence of a man with a family shall be construed to be where his family resides, and for a single man it shall be at the place where he is at work.

SEC. 15. The powers, duties, and accountability imposed on highway supervisors, so far as consistent with this act, shall apply with equal force to contractors, superintendents and assistants contemplated in this act.

SEC. 16. In all cases where the one highway district for the township shall have been adopted, it shall be competent for the township trustees to designate when the same shall take effect as to the working on the roads.

SEC. 17. Sections four (4) to fifteen (15) inclusive, of this act, shall apply and be in force only in such townships as adopt the one highway district plan provided for in this act.

The supervisor should keep an accurate account of each day actually spent by him in the discharge of his duties, and make a detailed statement of the same to the trustees on the first Monday in November.

Under section 984, eight hours constitutes a day's labor on the highway, but by section 14, chapter 200, Laws of 1884, in townships adopting the one highway district plan therein provided, nine hours faithful work constitutes a day's labor.

The certificate provided for in section 986 may be substantially as follows:

## No. 15.—CERTIFICATE OF LABOR PERFORMED ON HIGHWAY.

.....township, .....county, Iowa.

I, ....., clerk of.....township, .....county, Iowa, do hereby certify that.....has performed [here state the number of days] day's labor on the highway in highway district number.....in.....township, .....county, Iowa, during the year 18..., and that there is no money in my hands with which to pay the same. Given under my hand this.....day of.....18...

.....Township Clerk.

Should there be money in the hands of the clerk subsequent to the giving of such receipt sufficient to pay the same off, he may do so, and take up said receipt and credit the amount on his books.

SECTION 987. (*As amended by Chap. 43, Laws of 1896.*) The supervisors of the several districts of each township shall report to the township clerk on the first Monday of April and November of each year, which report shall embrace the following items:

1. The names of all persons in his district required to perform labor on the public highway, and the amount performed by each;

2. The names of all persons against whom suits have been brought as required by section nine hundred and eighty-five, and the amount collected of each;

3. The names of all persons who have paid their property highway tax in labor, and the amount paid by each;

4. The names of all persons who have paid their property tax in money, and the amount paid by each;

5. A correct list of all non-resident lands and town lots on which the highway tax has been paid, and the amount paid by each;

6. A correct list of all non-resident lands and town lots on which the highway tax has not been paid, and the amount of tax on each piece;

7. The amount of all moneys coming into his hands by virtue of his office, and from what sources;

8. The manner in which moneys coming into his hands by virtue of his office have been expended, and the amount, if any, in his possession;

9. The number of days he has been faithfully employed in the discharge of his duty;

10. The condition of the highways in his district, and such other items and suggestions as said supervisor may wish to make, which report shall be signed and sworn to by said supervisor, and filed by the township clerk in his office.

It is the duty of the township clerk to provide the supervisors with the necessary blanks on which to make out their reports; but should no blanks be provided, the supervisors may use the following form in making out such reports, which may be altered and changed when necessary to meet the circumstances of each case.



## No. 16.—REPORT OF HIGHWAY SUPERVISOR.\*

STATE OF IOWA, }  
.....County, }

Highway District No....., .....township.

To the Township Clerk of said Township:

The undersigned, supervisor of said highway district, herewith presents his semi-annual report in compliance with section 987, code of 1873, as follows:

NAMES. Of persons required to perform labor and paytax for highway purposes.	Poll Tax		Property Tax			Sued for Poll Tax		REMARKS
	Days l, b'r per m'd	Amount paid in cash	Amount levied	Amount paid in labor	Amount paid in cash	No	Am't col- lected	
Allen, John.....	2		\$12 00	\$6 00	\$6 00			
Baker, A.....	1	1 25	6 00	1 25	4 75			
Coons, S. T.....						1	5 50	

This report is required to be made on the first Monday of April and November of each year.

The list of non-resident lands and town lots specified in the foregoing section, may be in form as follows:

## No. 17.—LIST OF NON-RESIDENT LANDS AND TOWN LOTS.

In highway district number.....in.....township.....county, Iowa, showing the highway taxes for the year 18....., paid and unpaid, since last report:

Parts of Sections, Name of Town, or Sub-division.	Sec. or Lot	Twp. or Block	Range	Amount of Tax Levied		Amount Paid		Amount Unpaid		Remarks
W½ S. W¼.	6	67	42	6	00			6	00	
N. W. N. W.	13	67	40	12	00	6	00	6	00	

The account of moneys received and expended as above provided, should be accompanied with receipts or vouchers for all money paid out in his official capacity, and may be in form as follows:

## No. 18.—HIGHWAY SUPERVISOR'S CASH ACCOUNT.

District No....., .....township.

## MONEYS RECEIVED.

18.....	Amount on hand at last report.....	\$ 10 00
"	" received from township clerk.....	100 00
"	" collected on poll tax, as shown herein.....	25 00
"	" on property tax, as shown herein.....	50 00
"	" by suits for poll tax, as shown herein.....	10 00
Total.....		\$195 00

## MONEYS EXPENDED.

18.....	P'd for lab. on pub. highways, as shown by rec'pts herewith..	\$100 00
"	" bridge material, as shown by receipts herewith.....	50 00
	Balance on hand.....	45 00
Total.....		\$195 00

\*Blanks for Highway Supervisors' Annual Reports may be had of Acres, Blackmar & Co., Burlington, Iowa.

Attached to his report of taxes paid and unpaid, list of non-resident lands and town lots, and of moneys received and expended as above provided, must be his affidavit showing the correctness of said report, number of days he has been employed in the performance of his official duties, and the condition of the highways in his district at the time of such report, which affidavit may be in form as follows:

No. 19.—OATH TO HIGHWAY SUPERVISOR'S REPORT.

THE STATE OF IOWA, }  
 .....County, } ss I, .....being duly sworn, on oath say that  
 I am supervisor of highways in district No.....of.....township, in said county and  
 state; that the above and foregoing report is true and correct in every particular;  
 that I have been faithfully employed.....days during the last.....months in the  
 discharge of my duties as highway supervisor, and that the highways in said district  
 are in.....condition. ....Highway Supervisor.  
 Subscribed and sworn to by.....before me, .....18.....

Each highway supervisor should keep in a book kept for that purpose,\* a correct account between himself and the district, showing the time, from whom, and the amounts of all moneys received; the time, to whom, for what, and the amounts of all moneys paid out, which account may be substantially as follows:

No. 20.—ACCOUNT BETWEEN HIGHWAY SUPERVISOR AND THE DISTRICT.

.....Supervisor in account with  
 Highway District No....., .....township, .....county, Iowa.

MONEYS RECEIVED.				DR.
18...	April 1.	To cash from	Township Clerk.....	\$100 00
" "	5.	" " "	J. Taff, on Tax list.....	20 00
" "	20.	" " "	T. Laub, on Tax list.....	70 00
Total.....				\$190 00

MONEYS EXPENDED.				CR.
18...	May 4.	By cash paid	T. Lee, for 1 ber, vouch. No. 1.....	\$ 15 00
" "	10.	" " "	G. Fox, for labor, " " 2.....	10 00
" "	12.	" " "	A. Mann, for nails, " " 3.....	1 00
" "	15.	" " "	W. Ill, for timber, " " 4.....	100 00
" "	27.	" " "	J. Robb, for labor, " " 5.....	15 00
" July	1.	" " "	I. Frame, for plank, " " 6.....	25 00
" "	20.	" " "	Township Clerk, " " 7.....	24 00
				—————\$190 00

As the supervisor is charged by the township clerk with the amount on the tax list, it is necessary that he use care in noting the number days' labor performed and the money paid by the persons therein named; he must be enabled to show in his settlement with the clerk how many have paid their tax in labor and how many in money; the

amount of tax due in labor or poll tax, and the amount of property tax due and unpaid. No money shall be expended without taking a receipt or voucher therefor, to be filed away until his settlement with the township clerk. Unless the supervisor can account for all moneys coming into his hands, he will be liable for any deficit.

SECTION 988. If it appears from such report that any person has failed to perform the two days' labor required, or any part thereof, and that the supervisor has neglected to collect the amount in money required to be paid in case of such failure, the clerk shall add the amount required to be paid in case of such failure to such person's property tax, and certify the same as required in section nine hundred and seventy-five, and the auditor shall enter the same on the proper tax list, and the treasurer shall collect the same as required in said section nine hundred and seventy-five.

SEC. 989. The supervisor is not permitted to cut down or injure any tree growing by the wayside which does not obstruct the highway, and which stands in front of any town lot, enclosure, or cultivated field, or any ground reserved for any public use, where such tree is intended to be preserved for shade or ornament by the proprietor of the land on or adjacent to which the tree is standing; and it shall not be lawful for the supervisor to enter upon any enclosed or unenclosed lands for the purpose of taking timber therefrom, without first receiving permission from the owner or owners of said lands; nor to destroy or injure the ingress or egress to any property, or to turn the natural drainage of the surface water to the injury of the adjoining owners; *providing*, it shall be the duty of the supervisors to use strict diligence in draining the surface water from the public highway in its natural channels, and to this end he may enter upon the enclosed or reinclosed [unenclosed] adjoining lands for the purpose of removing obstructions from such natural channels that impede the flow of such water. (*As amended by Chap. 47, Laws of 1896.*)

Supervisors will be restrained from removing standing trees in the highway in front of the owner's premises, unless such removal is demanded by the wants of public travel and convenience; and the determination of the supervisors in such cases is not conclusive, but may be reviewed and controlled (36 Iowa, 583; 46 Iowa, 66).

The making of a small ditch in front of a residence is not such an interference with the owner's rights of egress or ingress as gives him right of action (40 N. W. R. 703).

Shade trees at sides of highway which do not obstruct the traveled tract should not be removed (61 Iowa, 471).

SECTION 990. When notified in writing that any bridge or any portion of the public highway is unsafe, the supervisor shall be liable for all damage resulting from the unsafe or impassible condition of the highway or bridge, after allowing a reasonable time for repairing the same. And if there is in the district any bridge erected or maintained by the county, then, in that event, he shall, on such notice of the unsafe condition of such bridge, as soon as he reasonably can, obstruct passage on such bridge, and use strict diligence in notifying at least one member of the board of supervisors of his county, in writing, of the unsafe condition of such bridge; and if he fails so to obstruct and notify, he shall be liable for all damages growing out of the unsafe condition of such bridge, occurring between the time he is so notified and such time as he neglects in obstructing such passage; and any person who shall remove such obstruction shall be liable for all



damages occurring to any person resulting from such removal; *provided*, that nothing herein contained shall be construed to relieve the county from liability for the defects of such bridge. (As amended by chapter 52, Laws of 1878.)

It is not incumbent upon the road supervisor to build or repair bridges requiring large expenditures of money; nor is he liable for failing to repair at large expense. Such matters are under the charge of the county supervisors (13 Iowa, 181).

He is required to build only such bridges as he can build with the limited means at his disposal (37 N. W. R., 138).

It is the duty of any person knowing any portion of the highway or any bridge to be in an unsafe condition to notify the supervisor of the fact at once; but to make him liable for neglect, the notice must be in writing (26 Iowa, 270), and may be in form as follows:

No. 21.—NOTICE TO SUPERVISOR OF UNSAFE CONDITION OF  
HIGHWAY OR BRIDGE.

To.....Supervisor of highways in Highway District No.....in.....township,  
.....county, Iowa:

You are hereby notified that the highway (or bridge) [here accurately describe the highway and place of defect] is in an unsafe condition.

Dated this.....day of.....18... ..

The statute makes no provision in reference to the service and return of the above notice, but it will be sufficient if it be conclusively shown that such notice was given.

The better way is to have the notice served and return made in the same manner that notices to property owners are served and returned, except that no publication is required (See forms Nos. 3, 4 and 5).

SECTION 991. For making such extraordinary repairs, the supervisor may call out any or all the able-bodied men of the district in which they are to be made, but not more than two days at one time without their consent, and persons so called out shall be entitled to receive a certificate from the supervisor, certifying the number of day's labor performed, which certificate shall be received in payment for highway tax for that or any succeeding year at the rate per day established for that year.

SEC. 992. If any able-bodied man, when duly summoned for any such purpose, fails to appear and labor diligently by himself or substitute, or send satisfactory excuse therefor, or to pay the value of such work in money at any time before suit is brought, he is liable to a fine of ten dollars, to be recovered by suit before any justice of the peace in the name of the supervisor, and for the use of the highway fund of the district.

One summoned to work on the highway, who is not an able-bodied man, and who does not appear and work, or make known his condition when summoned, does not thereby deprive himself of the benefit of the exemption (31 Iowa, 75).

## Removing Obstructions in Highways.

SECTION 993. The supervisor shall remove obstructions in the highways caused by fences or otherwise, but he must not throw down or remove fences which do not directly obstruct the travel upon the highway until reasonable notice in writing, not exceeding six months, has been given to the owner of the land enclosed in part by such fence.

The reasonable time will depend on circumstances, owing to the season of the year, and the damage that may result from the removing or throwing down of such fence, and is a fact for the determination of a jury (39 Iowa, 607; 40 Iowa, 684). The notice may be served and returned in the manner that notices to property owners are served and returned when served on persons residing within the county (See forms Nos. 3, 4 and 5). Such notice may be in the following form:

### No. 22.—NOTICE TO REMOVE FENCES OBSTRUCTING THE HIGHWAY.

To.....: You are hereby notified that you are required to remove your fence [here describe it] now obstructing the highway, on or before the.....day of.....18..., or said fence will be removed by the undersigned.

Dated this.....day of.....18...

.....*Supervisor of Highway District No...*

To obstruct a highway it is not necessary that it should be rendered impassable. An obstruction is an impediment; a hindrance; that which impedes progress (43 Iowa, 145).

The obstructions contemplated by this section are such hindrances or impediments as impede passage upon the road or render the highway unsafe (43 Iowa, 142); but the supervisor is not permitted to remove such obstruction, if a fence or building, without notice, though the person making the same may be liable on an indictment (34 Iowa, 478).

The supervisor may be enjoined from building a bridge so close to the margin of the highway as to do injury to the adjoining owner, when there is no other reason therefor than the saving of expense (61 Iowa, 471); he may also be restrained on threatenings of illegal action to open a highway by cutting trees, removing fences, changing water courses, &c. (67 Iowa, 207).

### Guide Boards Required

SECTION 994. The supervisor shall keep the highways in as good condition as the funds at his disposal will permit, and shall place guide-boards at cross-roads and at the forks of the highways in his district; said boards to be made out of good timber, the same to be well painted and lettered, and placed upon good substantial hard-wood posts, to be set four feet in and to be at least eight feet above ground.

### Extermination of Canada Thistles.

SEC. 995. The supervisor of highways, when notified in writing that any Canada Thistles (*Cnicus Lanceolatus*) are growing upon any vacant or non-resident lands or lots within his district, the owner, agent or lessee of which is unknown, shall cause the same to be destroyed, and make return in writing to the board of supervisors of his county, with a bill for his expenses or charges therefor, which shall be audited and allowed by said board and paid from the county fund: and the amount so paid shall be entered up and levied against the lands or lots on which said thistles have been destroyed, and collected by the county treasurer the same as other taxes and returned to the county fund. (*As amended by chapter 45, Laws of 1992.*)

SEC. 4062. If any person or corporation, after having been notified in writing of the presence of Canada thistles, or *Cnicus Lanceolatus*, on any lands owned or occupied by such person or corporation; or if any highway supervisor, after having been notified in writing of the presence of any such thistles on the highway under his jurisdiction, shall permit such thistles or any part thereof to blossom or mature, such person, corporation, or highway supervisor, shall be deemed guilty of a misdemeanor and be punished accordingly. (*As amended by Chap. 45, Laws of 1892.*)

### Extermination of Russian Thistles.

By Chapter 91, Laws of 1894, as amended by Chapter 78, Laws of 1896, it is provided as follows:

SECTION 1. It shall be unlawful for any land owner or occupant of lands or lots, or corporation or association of persons, owning, occupying or controlling land as right-of-way, depot grounds, or for any other purpose, or any public officer in charge of any street or highway, to allow to grow to maturity thereon the Russian thistle or saltwort, *salsoli kali* variety *tragus*.

SEC. 2. It shall be the duty of every person or corporation so owning, occupying or controlling lands, lots or other real property, or any highway supervisor or other public officer having charge of any street or highway, to cut and burn or otherwise entirely destroy any Russian thistles growing on said premises, right-of-way, highway or street, between the 25th day of July and the 10th day of August of each year, and any person, corporation or public officer neglecting to destroy all such Russian thistles between said dates, after notice of their presence in writing, to said person or corporation or officer, or to an agent of any said person or corporation, by any person, shall be deemed guilty of a misdemeanor and be punished accordingly.

SEC. 3. It shall be the duty of all persons knowing of the presence of Russian thistles upon any premises, lands, lots, streets, highways, or elsewhere, in any township at any time after the 10th day of August and before the 15th day of August to give notice in writing to the owner, occupant, persons or corporation in possession or control thereof, and if not destroyed by such owner, occupant, or persons in possession by the 20th day of August, to give notice in writing immediately after the 20th day of August, of that year to any member of the board of township trustees in which said thistles are growing; or if within a city or incor-



porated town then to give notice in writing to the mayor, recorder, or clerk thereof; who shall, on or before the 5th day of September, cause the same to be cut, burned, or otherwise totally destroyed.

The reasonable costs of destroying said thistles and of serving said notices afore-said shall be paid out of the general county fund on the certificate of the board of township trustees or city or town council of the amount of the same, which certificate shall describe the lands or lots upon which said thistles were destroyed and the amount of costs for destroying the same on each tract, together with the costs of serving said notices thereon, and upon the filing of the certificate in the auditor's office the county board of supervisors shall cause the amount so paid to be levied as a special tax against the premises on which said thistles have been destroyed, and against the persons or corporation owning said premises, and the county treasurer shall collect the same as any other tax, and return it to the county fund. The costs for serving said notices on said officers shall be the same as original notices in justice's court, but only one such charge for serving said notices shall be taxed against each owner of said land.

SEC. 4. A bulletin shall be prepared by the professor of agriculture of the State Agricultural College, briefly describing by words and cuts the Russian thistle with the best known means of staying its progress and effecting its extermination. Said bulletin shall be printed by the state printer at public expense from time to time, in such numbers as the secretary of state and said professor of agriculture may deem necessary to supply the demand. A sum of money sufficient to pay for the cost of printing and making of suitable plates for illustrating said bulletin, is hereby appropriated from any funds in the state treasury not otherwise previously appropriated.

SEC. 5. The secretary of state shall furnish to the agricultural college such a number of said bulletins as it may desire to circulate, and also to county auditors on their requisition in such numbers as may be necessary to supply all township and town or city officers with copies and a sufficient number to distribute to all farmers desiring the same.

### **Supervisors to Make Settlement.**

SECTION 996. The supervisors are required to meet the township trustees at the meeting on the first Monday in November in each year, at which time there shall be a settlement of the accounts of such supervisors connected with the highway fund, for putting up guide-boards and for any other services; and after payment of the supervisors, the trustees shall order such distribution of the funds in the hands of the township clerk as they may deem expedient for highway purposes, and the clerk shall pay the same out as ordered by the trustees. (*As amended by Chap. 43, Laws of 1895.*)

The fund here referred to is the balance of the general fund, and does not include the money paid over by the county treasurer as taxes collected by him, excepting such as may properly come under the head of the general fund (45 Iowa, 519).

The clerk is the proper party to bring suit to recover the money (62 Iowa, 468).

SECTION 997. Should there be no money in the treasury on final settlement of the supervisors with the trustees, said trustees shall order the township clerk to issue orders for the amount due the supervisors. The orders so issued shall be numbered with the number of the district to which they belong, and shall be received the same as money in payment of highway tax in the district to which they are issued.

The trustees may be compelled to levy a tax to meet any deficiency of the general fund. The orders may be used in payment of highway taxes, but the supervisor cannot be compelled to receive payment in that way (52 Iowa, 81). As to the application of money (76 Iowa, 397).

#### **Penalty for Neglect to Perform Duties.**

SECTION 998. Any supervisor failing or neglecting to perform the duties required by this chapter, shall forfeit and pay for the use of the highway fund of his district the sum of ten dollars; the township clerk shall, in case of such failure or neglect, commence suit in his name for the collection of the same, before any justice of the peace within the proper township.

#### **Fence May be Built on Highway When Hedge is to be Planted on the Line of the Same.**

SEC. 999. Where any owner or occupant of land adjoining or abutting upon any highway may desire to plant a hedge upon the line of the same, he shall be allowed to build his fence upon such highway; but he shall not build the fence more than five feet within the outer line of said highway, and said fence may be built on both sides of all highways of fifty feet or more in width at the same time. Such owner or occupant shall not be allowed to occupy such highway as aforesaid for more than ten years, and not more than six months before such hedge shall be planted, and at the expiration of such time he shall remove such fence upon the order of the supervisor of the district where such highway is situated.

#### **Hedges to be Trimmed.**

Chapter 48, Laws of 1896, relative to trimming Osage Orange, Willow, and all other hedge fences, provides as follows:

(NOTE.—This chapter is almost identical with chapter 88, Laws of 1894, and was probably intended as a substitute therefor, but contains no repealing clause, nor anything to show that fact.)

SECTION 1. The owner of any osage orange, willow, or any other hedge fence, unless the same shall be used as a wind-break for the orchards or stock, or shall

be maintained as an ornamental fence, shall keep the same trimmed along the public highways, by trimming or cutting back to within five feet of the ground at least once in every two years, and shall burn or remove the brush so cut from the highway.

SEC. 2. And it shall be the duty of the road supervisor, in case of a failure to comply with section 1 of this act, to serve written notice on such owner, then, if such owner refuse or neglect to comply with section 1 hereof for a period of sixty days after service of such notice, the road supervisor shall cause such work to be done, and it shall be paid for out of the highway fund.

SEC. 3. It shall be the duty of the road supervisor to notify the owner of the land of the expense of doing the work as provided in section 2.

SEC. 4. The township clerk, when certifying lists of land for transmission to the county auditor, upon which the highway tax has not been paid, as provided in section 975 of the Code of 1873, shall include in such lists a description of all lands, and the names of the owners, along which any work has been done by the road supervisor in accordance with the provisions of this act, together with the amount paid out of the highway fund therefor; and the auditor shall enter the amount against the land, and the owner thereof, unless the same has been previously paid, and deliver the same to the county treasurer; and which amount shall be collected by the treasurer in the same manner that county taxes are collected.

SEC. 5 Where the township system is adopted under chapter 200 of the acts of the Twentieth General Assembly of the state of Iowa, it shall be the duty of the township trustees to enforce the provisions of this act.

A highway becomes a public highway whether established by the original location or by re-location, and the erection of a fence across it would amount to an obstruction; and when a person is indicted for obstructing a public highway the only questions to be determined are: "1. Was it a public highway as recognized by law?" "2. Was it obstructed by the defendant?" (1 Green., 439) and malice is not a necessary element of the offense of obstructing a highway, the intention to so obstruct only being necessary to precede the act (40 Iowa, 374). If the highway laid out cannot be used on account of natural obstructions, and another line is established by prescription or long usage in order to evade such natural obstructions, the owner of the adjacent land cannot fence up such traveled highway without being liable (40 Iowa, 595).

In removing fences and other obstacles from the highway, the supervisor must not exceed his authority given by the statute, and must then perform his duty in respect thereto in an ordinarily prudent and careful manner; and if when he so acts he makes slight variations from, or infringements over the line upon the lands of adjacent



proprietors, it seems he will not be liable for trespass (31 Iowa, 138), and if he fails to remove fences or other obstructions as required by law, he may be compelled by an action of *mandamus* (36 Iowa, 93).

If a fence along a highway is so situated as to endanger public travel, although it does not extend across the track, or to require removal in order to render the road safe for public use, it is a direct obstruction of the highway and should be removed (39 Iowa, 607).

The statute provides that if any person maliciously injure, remove, or destroy any bridge, road, or plank road, or place, or cause to be placed, any obstruction on such bridge, highway or road, or wilfully obstruct or injure any public road or highway, he shall be punished by imprisonment in the penitentiary not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding one year (code of 1873, Sec. 3979); and a prosecution may be supported for obstructing a highway established by use or prescription, which is of less width than a county or state road established in the manner pointed out by the statute (28 Iowa, 514); but a fence projecting into the highway which does not obstruct public travel is not such an obstruction as would justify a criminal prosecution, and the highway supervisor shall not cause it to be removed without giving the owner reasonable notice (40 Iowa, 684).

While highway supervisors are in duty bound to keep the highways in as good condition as the funds at their disposal will permit (code of 1873, section 994), and are liable for all damages resulting from the unsafe or impassable condition of the highways or bridges, when notified of such defect (code of 1873, section 990), they are not liable for damages resulting from defects, the repairs of which would involve extraordinary expenditures (13 Iowa, 181). However, it is the duty of supervisors to make small bridges, and repair small defects in large bridges, and for a failure or neglect to do so they are liable (13 Iowa, 181).

It is the duty of the county in which a bridge is situated to make all repairs requiring an extraordinary expenditure of money (13 Iowa, 181); such as would properly come under the designation of county bridges, and such as the county would be bound to build or repair, or over which its officers had exercised jurisdiction (26 Iowa, 265); hence in application of the rule it was held of a bridge some twelve or fourteen feet wide, across a ditch or small ravine two or three feet wide, and two feet in depth, in which structure there was a hole which caused an injury to the plaintiff while traveling on the public highway of which such bridge was a part, that the county was not liable;

but a county has been held liable for the unsafe condition of bridges that have been built by county authorities (26 Iowa, 265).

In order for a person to maintain an action on account of an injury occasioned by a defect in a highway, he must show that the highway was unsafe, and that he was in the exercise of ordinary prudence and care in traveling thereon, and an action may be maintained although the primary cause of the injury was an accident, as the breaking of the carriage or running away of the team, if the party was not in fault (25 Iowa, 108).

Section 1225 of the Code of Iowa, relating to drains across highways has been repealed, and by act of the Twenty-first General Assembly, chapter 55, the following is substituted:

SECTION 1. When any water course or natural drain crosses any public highway in the state of Iowa, and the adjoining or abutting land owner wishes to cross said highway with an underground tile drain for an outlet, or to connect with another underground tile drain, they shall notify the road supervisor having supervision over the public highway to be crossed, in writing, specify the depth of drain and size of tile to be used in crossing said highway, and give the road supervisor twenty days' time to construct said underground tile drain.

SEC. 2. When the road supervisor receives said written notice, he shall order said underground tile drain constructed across said highway, and pay for the tile and construction of the same out of any money or fund in his command.

SEC. 3. If the supervisor fails to construct said underground tile drain within the twenty days' time, then the abutting or adjoining land owner may go upon the highway and construct said underground tile drain across said highway, and he shall receive pay for constructing the same, including tile used in crossing said highway, out of any money or fund belonging to said road district, provided he shall leave the highway in as good condition as it was before the drain was constructed.

And by chapter 96, Twenty-second General Assembly (1888), it is provided: Any person shall have the right to go upon any public highway to construct an outlet to a drain, provided he shall leave the highway in as good condition as it was before the drain was constructed, to be determined by the supervisor of highways in the district where the work was done.

## XXV. CONSTRUCTION OF HIGHWAYS LEADING INTO CITIES AND TOWNS.

In reference to the construction and repair of highways leading into cities and incorporated towns, the statute provides that they may do so by appropriating therefor a portion of the highway tax belonging to said city or incorporated town, not exceeding fifty per cent. thereof annually, as hereinafter provided. When a petition shall be

presented to the council or trustees, signed by one-third of the resident tax-payers of said city or town, asking that the question of aiding in the construction or repair of any highway leading thereto be submitted to the voters thereof, the council or trustees shall immediately give notice of a special election by posting notices in five public places in said town at least ten days before said election, which notice shall specify the time and place of holding said election, the particular highway proposed to be aided, the proportion of the highway tax then levied and not expended, or next thereafter to be levied to be appropriated, at which election the question of "appropriation" or "no appropriation" shall be submitted, and if a majority of the votes polled be for appropriation, then the council or trustees may aid in the construction and repair of said highway to the extent of said appropriation, in the same manner as they otherwise would if said highway was within the corporation limits of said city or town; but no part of such highway tax shall be expended more than two miles from the limits of such city or town; *provided*, that in incorporated towns and cities of the second class, whether organized under a special charter or under the general incorporation law, with a population under ten thousand inhabitants, whenever one-third of the resident tax-payers of such incorporated town or city, shall petition the trustees or council of such incorporated town or city, asking that a portion of the highway tax of such incorporated town or city may be used to aid in the construction or repair of highways outside and within three miles of the limits of such incorporated town or city, such trustees or council may, upon the presentation of such petition, order a part of the highway tax of such incorporated town or city, not exceeding twenty-five per cent. thereof, to be used and expended to aid in the construction or repair of highways outside and within the three miles of the limits of such incorporated town or city (code of 1872, section 488, as amended by chapter 52, Laws of 1880).

## XXVI. MEETING ON HIGHWAYS.

SECTION 1000. Persons meeting each other on public highway shall give one-half of the same by turning to the right. All persons failing to observe the provisions of this section shall be liable to pay all damages resulting therefrom, together with a fine not exceeding five dollars, which fine shall be appropriated to repairing the highways in the district where the violation occurred; but no prosecution shall be instituted except on complaint of the person wronged.



# BRIDGES AND FERRIES.

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## XXVII. BRIDGES.

The board of supervisors have power and it is their duty to provide for the erection of all bridges which may be necessary, and which the public convenience may require, within their respective counties, and to keep the same in repair; but it shall not be competent for said board to order the erection of a bridge where the probable cost will exceed five thousand dollars, until a proposition therefor shall have been first submitted to the legal voters of the county, and voted for by a majority of all voting for and against such proposition at a general or special election (25 Iowa, 238, as amended by chapter 46, Laws of 1880), notice of the same being given for thirty days previously in a newspaper, if one be published in the county, and if none be published therein, then by written notice posted in a public place in each township in the county; *provided*, that the board of supervisors of any county having a population of more than ten thousand, may appropriate for the construction of any one bridge, which is or may hereafter become a county charge within the limits of such county, or may appropriate toward the construction of any bridge across any unnavigable river, which is the dividing line between any two counties in this state, and between one county of this state and another state, such sum as may be necessary, not exceeding the sum of forty dollars a lineal foot for superstructure; but in no case shall they appropriate for said purpose, including superstructure and approaches, a sum exceeding fifteen thousand dollars; *provided, however*, that in any county having a population exceeding fifteen thousand, said board may appropriate as aforesaid, not to exceed twenty-five thousand dollars; *provided*, that no county shall expend a sum exceeding fifteen thousand dollars in aid of the construction of a bridge across a stream which is the dividing line between two counties (code of 1873, section 303, as amended by Laws of 1876, chapter 80).

SECTION 1001. Bridges erected or maintained by the public, constitute parts of the highway, and must not be less than sixteen feet in width.

Bridges are parts of the highway (16 Iowa, 339), and they are under the general control of the supervisors, though they cannot be compelled to build them where they conclude the public interests do not demand them (43 Iowa, 193), and the bridge must not of necessity be of the statutory width. A less width will not defeat a recovery on the contract by the party building it (48 Iowa, 681).

Bridges should be wide enough to permit the passage of all vehicles and machinery in use, and which are drawn on the highway (61 Iowa, 471).

SECTION 1002. Any person riding or driving faster than a walk across any bridge maintained at the public charge, shall be subject to pay the following penalties: When the bridge is twenty-five feet in length, and does not exceed one hundred, the sum of one dollar for each offense; when it is over one hundred, and does not exceed two hundred feet in length, the sum of three dollars for each offense; where it is over two hundred, and does not exceed three hundred feet in length, the sum of five dollars for each offense; and the further additional sum of one dollar for each offense for every hundred feet in length in excess of three hundred, to be recovered by civil action in the name and for the county in which the bridge is situated. If the bridge is situated in more than one county the action is maintainable in or by either.

In cities and incorporated towns the council shall have the care, supervision and control of the public highways and bridges within the city, and shall cause the same to be kept in repair; and all public bridges exceeding forty feet in length over any stream crossing a state or county highway, shall be constructed and kept in repair by the county; *provided*, that the city council may appropriate a sum not exceeding ten dollars per lineal foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city or a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city is located from another state (code of 1873, section 527; Laws of 1874, chapter 5).

The board of supervisors is invested with power to erect and repair necessary bridges, and may levy a tax therefor not exceeding three mills on the dollar (19 Iowa, 87; 21 Iowa, 119); they also have power to aid in the construction of free bridges for public highways, either within or without incorporated cities and towns; and section ten hundred and ninety-seven of the revision of 1860 (code of 1873, section 527) does not take away the right of counties to build bridges in incorporated cities and towns on public highways (21 Iowa, 144).

Counties are not liable for injuries caused by defective bridges within the corporate limits of cities of the second class (21 Iowa, 409); but for the non-repair of county bridges they are liable for injuries therefrom (13 Iowa, 181; 26 Iowa, 264, 395; 32 Iowa, 328; 40 Iowa, 217; 40 Iowa, 394; 43 Iowa, 456; 44 Iowa, 141); but the liability of counties for injuries caused by a failure to construct bridges or keep them in repair, extends to the larger class of bridges which require an extraordinary expenditure of money and are properly designated as county bridges (26 Iowa, 264; 40 Iowa, 395, 294).

The fact that a part of the cost of building a county bridge was paid by voluntary contributions, and the money expended under the direction of others than agents of the county, will not take away the liability to keep said bridge in repair (40 Iowa, 394).

Whether the approaches to a bridge constitute a part of the bridge proper or not, is a question of fact to be determined by the jury (40 Iowa, 394; 46 Iowa, 177).

Whenever a county line road intersects a stream of sufficient width to require a county bridge, and the point of intersection does not afford a suitable site for the construction of such bridge, and there is a good site for the erection of a bridge wholly within one or the other of said counties, at a reasonable distance from the county line, the board of supervisors of the respective counties to be benefited by said bridge may make the necessary appropriations for the construction and maintenance of such bridge, the same as they might do if said bridge was located on county line (Laws of 1878, chapter 40)

By Session Laws of 1880, Eighteenth General Assembly, chapter 45, in counties containing a city of the first class in which are bridges more than three hundred feet in length, and for the cost of which such city is indebted in an amount not less than one hundred thousand dollars, the board of supervisors is required annually to set apart all the bridge tax collected during the year on taxable property in such city and apply the same to the cancellation of said bridge debt, and if any money or tolls remain in excess of that required for the purpose above named, such excess may be used in repairing other city bridges needing repairs. And by Nineteenth General Assembly, chapter 63 (Session Laws, 1882), provision is made to enable any township, incorporated town or city, to aid in the construction of county bridges when the supervisors estimated cost of the same is not less than \$10,000. Whenever a petition shall be presented to the council or trustees of an incorporated town or city, or the trustees of a township,



signed by a majority of the resident tax-payers of such city, town or township, asking that the question of aiding the construction of a county bridge, to be in whole or in part within such city, town or township, or in the township in which such city or town is, be submitted to the voters thereof, the trustees or council shall give at least ten days' notice of a special election, by posting in five places in such city, town or township, the time and place thereof, the location of the proposed bridge, and the rate and terms of the tax to be levied. The aggregate tax levied for the purpose cannot exceed five per centum of assessed value of the property to be taxed for the purpose, nor shall it exceed one-half of the estimated cost of the bridge. The taxes thus proposed shall be collected at the time or times specified in the order, by the county treasurer, in the same manner and subject to the same penalties for non-payment after maturity, as other taxes. The money thus provided shall be paid out on the order of the board of supervisors, by the county treasurer.

#### ON THE USE OF SURPLUS BRIDGE AND ROAD FUNDS.

Chapter 88 Laws of 1880, provides that upon petition of one-third of the resident freeholders of a township in any county free from debt, and in which is a bridge fund, the board of supervisors of the county may, after providing for necessary bridge repairs, apply the surplus to the improvement of highways, upon contracts let to the lowest responsible bidder, granted after at least fourteen days' notice, in some newspaper published in the county, of the proposal. But no larger indebtedness shall be incurred than can be paid with such surplus.

Chapter 42, Laws of 1896, provides that the board of supervisors of any county that now has a surplus in its county road fund, not needed for the purpose for which levied, may transfer so much of such surplus as they deem best to the county fund or county bridge fund. This applies only to money collected prior to January 1, 1896, and to such counties as have levied and collected said road tax in the incorporated towns and cities as well as the territory outside of said cities.

#### ON BUYING BRIDGES OVER STREAMS DIVIDING COUNTIES.

By chapter 13, Acts of the Twentieth General Assembly (Session Laws of 1884), the boards of supervisors of adjoining counties, each of which has a population exceeding 10,000 inhabitants, according to the last census, are authorized to purchase any toll bridge erected across a stream dividing such counties, and maintain it at their joint expense as a free public bridge, provided the cost of the bridge shall not exceed \$10,000. The contract between the parties shall be in writing, and signed by the chairman of the respective counties, and made part of their records; and if they cannot agree the cause may be submitted to the district court, which, upon a hearing of the case, may enter a decree in favor of the purchase, and determine the expense of the purchase and maintenance of such bridge to the several counties according to the relative advantage accruing to each. If

the decree is not appealed from, the supervisors shall at once proceed to complete the terms of its purchase and maintenance, and levy the necessary taxes for the purpose. Such counties are thereafter responsible for the safe condition of such bridge, as provided by law.

By chapters 13 and 98, laws of 1886, as amended by chapter 19, laws of 1894, it is provided that when the inhabitants of any incorporated city in the state, containing over 5,000 inhabitants, are desirous of constructing or aiding in the construction of a highway bridge, or a combination bridge suitable for use both as a highway and for railway purposes, commencing or terminating in such city, across any navigable boundary river of the state, and shall vote a tax for the purpose not exceeding five per centum of the assessed value of property in such city, it shall then be the duty of the board of supervisors of the county, at the time of levying the ordinary taxes, to levy the tax thus voted. The law also provides the manner of its collection and its expenditure for the purposes indicated.

## XXVIII. TOLL BRIDGES.

The board of supervisors have power to grant licenses for toll bridges across any water course or other obstacle which justifies the establishment of the same; which license may continue for a period not exceeding fifty years, and may stipulate that no other bridge shall be permitted to cross the same obstruction within not exceeding two miles from such bridge, and a period not exceeding ten years.

They shall have power to fix the rates of toll, and regulate said bridges so as to allow persons to pass at any time.

In granting licenses, preference must be given to the keeper of the previous bridge at the same point, or if it be a new bridge, preference shall be given to the owner of the land.

The licenses must be entered upon the records of the board of supervisors, and shall contain the rates of toll allowed, and the rates must be conspicuously posted up at the extremity of the bridge, or some other conspicuous place near by; and a failure to do so will justify any person in refusing to pay the toll, and if habitually, the proprietor shall be liable to pay twenty-five dollars.

The proprietor may establish rules for the regulation of teams so passing over said bridge; and any person who refuses to pay the regular tolls established and posted up in accordance with the provisions of this charter, or who shall run through or pass around the toll gates with a view of avoiding the payment of just tolls and dues,

when the rates have been posted up as required by law, shall forfeit five dollars, together with costs of suit, for every such offense (code of 1873, section 1025).

The provisions relating to ferries are alike applicable to toll bridges, unless otherwise specified.

## XXIX. TOLL-BRIDGES OVER STREAMS DIVIDING COUNTIES.

SECTION 1. That the board of supervisors in adjoining counties each of which contains according to the last census, a population exceeding 10,000 inhabitants shall have authority to purchase and acquire any toll-bridge erected across any stream dividing said counties at the place said bridge is erected, and keep and maintain the same at joint expense as a free public bridge, provided that the total cost of such bridge shall not exceed the sum of \$10,000.

SEC. 2. If said boards of supervisors are able to agree upon the terms upon which they will purchase such bridge, and the proportion each will pay towards the purchase and maintenance of the same, such agreement shall be reduced to writing signed by the respective chairmen and recorded in the records of their proceedings. But if they are unable to thus agree the county desiring to purchase said bridge may institute a special proceeding in the circuit [district] court of either of said counties, and said cause shall be conducted as an equitable cause, and the court shall determine whether there is any public necessity for said bridge, the relative benefit the same will be to the two counties, and based upon such benefit the proportion each county shall bear in the purchase and maintenance of said bridge, and shall enter decree accordingly, either or both parties having the right of appeal to the supreme court. Upon entering of a decree in favor of the purchase of such bridge, it shall be the duty of said respective boards of supervisors at once to proceed to complete the purchase upon such terms as are determined on and to forthwith levy the necessary taxes to make the payments, and said counties shall thereafter keep and maintain such bridge and be responsible for the safe condition thereof as provided by law (chapter 13, 20th General Assembly).

## XXX. FERRIES.

The board of supervisors have power to grant licenses for ferries across any water course or other obstruction which justifies the same, which may continue for a period not exceeding ten years, and may stipulate that no other ferry shall be kept within one mile in either direction from said ferry, except it is made to appear to the board that the public good requires both ferries, after giving the holder of such license twenty days' notice.

They may prescribe rates of ferriage, and the hours of the day and night during which such ferry must be attended, both of which may be changed by the board at their discretion.



Preference must be given to the owner of a previous ferry, or if a new one, the owner of the land at the point where the ferry is to be kept, if the board think either of such to be a proper person, otherwise any other proper person may have such privilege.

When the opposite shores of a stream are in different counties, either county may grant such license, and the county first exercising the jurisdiction retains the same during the term of such license. When but one side of the river is in this state, the board have control over the shore in this state the same as if the river was wholly in this state.

Every ferryman shall be required to give bond in a penalty not less than one hundred dollars, for the faithful performance of his duties according to law and the rules prescribed; he must transport the public expresses of the United States and of this state, and the United States mail at any hour of the day or night.

The law relating to toll bridges is alike applicable to ferries, unless the same is otherwise provided.

Such franchises are subject to execution, together with all material, implements, rights of way and works of whatever kind ordinarily used in their exercise, and the purchaser may take immediate possession.

Nothing contained in this chapter shall prevent the establishment of a free ferry by any person or corporation, nor from mill owners from crossing themselves or customers free of charge (code of 1873, title VII, chapter 3).

A public ferryman is a common carrier and subject to the same duties and responsibilities (23 Iowa, 90), which make them liable under all circumstances, subject only to the contingencies arising from the act of God or public enemies (Greenleaf on Evidence vol. 1, section 218; 18 Iowa, 555). He is bound to keep his boat in running order and proper condition, and is liable (without a reasonable cause) for damages resulting from his failure thereof, which may be both to a city for the violation of an ordinance, and to the individual sustaining such damage (22 Iowa, 90; 27 Iowa, 460).

A ferry license is not vacated by the death of the party to whom the license was issued, but passes to his representatives (27 Iowa, 460).

An appeal does not lie from the action of the board of supervisors in refusing to grant a ferry license, but the vacation of a license by the board of supervisors is a decision from which an appeal will lie (25 Iowa, 445).

### XXXI. OBSTRUCTING, DEFACING OR INJURING PUBLIC HIGHWAY, PUNISHED.

If any person without authority or permission from the proper road supervisor, shall in any manner obstruct, deface, or injure any public road or highway by breaking up, or plowing, or digging within the boundary lines thereof, he shall, upon conviction, be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment in the county jail not more than thirty days, in the discretion of the court (chapter 17, Laws of 1874). Nor will it be a defense that such change has been an advantage to the highway (68 Iowa, 447).

### XXXII. RUNNING STEAM ENGINE ON HIGHWAY.

(CHAPTER 68, LAWS OF 1892, AS AMENDED BY CHAPTER 21, LAWS OF 1894.)

SECTION 1. It shall be the duty of persons in charge of any steam engine being propelled upon the highways of this state wholly or in part by steam power, to stop said engine whenever it is one hundred yards distant from any person or persons going on said highway with horses or other animals until said horses or other animals shall have passed, and sooner in case said horses or other animals become frightened before arriving at said distance. The owner or driver of said engine shall also keep a competent man, not less than fifty or not more than one hundred yards in front of said engine to assist in controlling any horses or other animals being driven or used on said highway until said horses or other animals shall have passed by said engine, and it shall be the duty of said man to use all reasonable care and diligence to prevent the occurrence of any accidents which might result in case said horses or other animals become frightened at said steam engine.

SEC. 2. It shall be unlawful for any person to drive, cause to be driven, or be engaged, concerned or employed in driving a steam engine over any bridge or culvert on any public highway in this state, without using four sound, strong planks, each to be not less than twelve feet long, one foot wide, and two inches thick; two of said planks to be kept continuously under the wheels of said engine while crossing said bridge or culvert.

SEC. 3. It shall be unlawful for any person to blow the whistle of said engine on the public highway.

SEC. 4. Any person who by himself, agent or employe shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for each offense be fined not less than ten dollars nor more than fifty dollars, to be recovered before any court of competent jurisdiction, and shall also be liable for all damages that may be sustained by persons or property by reason of his failing to comply with the provisions of this act.

### XXXIII. PROCURING BROKEN STONE FROM ANAMOSA PENITENTIARY, FOR IMPROVING AND MAC- ADAMIZING HIGHWAYS.

By Chapter 20, Laws of 1894, it is provided as follows:

SECTION 1. After the passage of this act the warden of the penitentiary at Anamosa is required to have all stone which are not used for building purposes by the state, and all refuse stone at the state quarry broken up by the use of hammers into pieces not larger than two and one-half inches in diameter. Such broken stone is to be used for the improvement and macadamizing of highways and streets. The said warden is required to have this work done by convict labor except when employed in work upon public buildings or other important work.

SEC. 2. No county shall be allowed more than one order of ten car loads until all other orders are filled.

SEC. 3. If any county, township, road district or town or any city desires such stone for above named purposes, the road supervisors or any other officers having the supervision of highways or streets shall notify the county auditor and if he be satisfied that such stone are needed for the purpose above stated, he shall issue his requisition upon the said warden for such a quantity of stone as is wanted, but not to exceed ten car loads to any city, town or road district in any one month. Upon the receipt of the requisition for stone from any county auditor in this state, the said warden shall cause the stone to be loaded on the cars free of all charges, but the county, township, road district, city or town ordering such stone shall pay all such transportation expenses. All requisitions for such stone shall be filed in the office of said warden and he shall fill the same in rotation in the same order as they were received by him, and none of such stone shall be used or disposed of for any other purpose whatever except for the use of the state and such purposes as are named in this act.



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